

[REDACTED]  
Proposed Cease and Desist Order Number [REDACTED]  
Tuesday, November 14, 2006

Regional Water Quality Control Board  
895 Aerovista Place, Ste. 101  
San Luis Obispo, CA 93401

Mr. Chairman, Honorable Board, and RWQCB Staff:

The attached document represents my evidence package due to RWQCB by 5:00 pm Wednesday, November 15, 2006. In the spirit of cooperativeness, I have mirrored the technique used by prosecution staff to submit their documents. Any changes or additions from my original package are in **bold** font. Deletions are indicated by ~~strikethrough~~-font.

[REDACTED]

Finally, I am still hopeful we may reach a mutually agreeable settlement prior to these scheduled hearings, and wish to retain the right to have our hearing rescheduled so that the Board may rule on a proposed settlement if we are able to reach that point. This action would be consistent with the *Prosecution Team's Notice of Proposed Settlement* (posted November 7, 2006) and with the Prosecution Staff's Notice of Additional Settling Dischargers (posted November 13, 2006).

Sincerely,

[REDACTED]

[REDACTED]  
Proposed Cease and Desist Order Number [REDACTED]  
Tuesday, November 14, 2006

Regional Water Quality Control Board  
895 Aerovista Place, Ste. 101  
San Luis Obispo, CA 93401

Mr. Chairman, Honorable Board, and RWQCB Staff:

On or about January 28, 2006, I received from the Central Coast Regional Water Quality Control Board ("RWQCB") a letter and a number of documents explaining that I was being prosecuted for **alleged** violations of a septic system discharge prohibition. The letter stated that the prohibition took effect in 1988 and is contained in the Water Quality Control Plan for the Central Coast Region. The documents further informed me that the RWQCB would hold a hearing on this matter on March 23, 2006, and that any comments or evidence that I wished to submit had to be in the hands of the RWQCB on or before March 1, 2006. Thereafter, the RWQCB continued the Hearing to April 28, 2006, and the due date for these comments to April 5, 2006.

**The first round of hearings were held on April 28, 2006. Due to the enormity of this task, the hearings were continued to May 11<sup>th</sup> and May 12<sup>th</sup>. The May hearings dates were then continued due to the Prosecution Team's request for a continuance. This continuance was due to the Prosecution Team's requirement to change its legal counsel. These hearings were scheduled for November 2<sup>nd</sup> and 9<sup>th</sup>. Once again, the hearings were postponed, this time due to a late posting of documents for review. The hearings are now scheduled for December 14<sup>th</sup> and 15<sup>th</sup>.**

This letter represents my formal comments, **comments which** will be explained in full at the Hearing(s) by me and/or by my counsel or representative. In addition, I am under the belief that the Los Osos Community Services District ("CSD") is submitting a number of documents in support of its comments on this matter. I hereby reserve the right to comment on those documents. In addition, the RWQCB information ~~sent to me~~ informed me that the RWQCB prosecution team would rely on a list of documents in its presentation. While the RWQCB team claims that it has made its documents available for my review, they have only been available at RWQCB offices during the work day. Because I am unable to get to the RWQCB offices during the work day, I have not had a chance to review the documents, but I reserve the right to comment at the Hearing on the documents and/or on any arguments based on them.

**Additionally, I wish to incorporate all of the other defendants' evidence, documents, witnesses, arguments and testimony by reference into this package, and reserve my right to use this additional information in my defense as necessary.**

~~We Have Not Had Enough Time to Prepare Our Defense.~~

**The Time Required to Properly Respond to Your Requests and the Effort Required to Properly Prepare for the Hearings are Clear Indicators that this Method of Enforcement is Intended for Industry and Industrial Dischargers.**

Dozens of hours have gone into preparing this small package. Collectively, hundreds if not thousands of hours have gone into preparing the packages for the entire group of proposed Cease and Desist Order (CDO) recipients. But it's still not enough. ~~I knew of one person in the entire community of Los Osos that actually had the time, and took the time to go through the thousands and thousands of pages of evidence located at the Regional office. The rest of us have jobs we have to try and maintain to pay the bills. While having unlimited access to the documents Monday through Friday, 8:00 – 5:00 may be convenient for staff, it is nearly impossible for us lay people to adhere to those time constraints. Even if we could, even if I had read through all 8,000 pages of evidence since the end of January when we first received your proposal, there is no plausible way in which I could have organized and properly analyzed that much information in so little time. And to not only organized, copy, and analyze but also to have the time to have mounted a defense and rebut that much data is just not possible. Not for one individual, or even a couple of people.~~

**When you pull yourself away from the process and step far enough back to see the whole picture, it becomes very clear. ~~Rather these proposed actions,~~ These CDOs, are intended for industrial and commercial polluters. They are intended for factories, for chemical plants, and for sewer plants. They were designed for silver mines and cattle ranches. THEY WERE NEVER INTENDED FOR INDIVIDUAL HOMEOWNERS. When you keep that in mind, the process and procedures you have in place make perfect sense. Large industries have staff that are able to deal with this. They can devote the hundreds if not thousands of man hours necessary to properly analyze the prosecution's evidence and prepare an adequate defense against the charges.**

Further, large industry actually has the means and wherewithal to properly address the alleged violation. As homeowners, we do not and can not.

**You Are Attempting to Hold Individuals Accountable and Responsible for Actions beyond their Control**

It is not our fault that there is not a sewer plant in Los Osos to which we can hook up our house. It is not our fault, it is not our neighbor's fault, nor is it even the fault of our whole block. It is the fault of a prior CSD board that was so far removed from the will of the people that the entire staff that supported the project was removed from office. Had the prior CSD selected a project based on merit instead of their future legacy we would be building a plant right now. Truly stop for a moment and think about it. The ONLY manner in which Tri-W emerged as the best project to select was when they stacked the deck. They weighed having some sort of recreational park next to an industrial complex, pathogen rich, subject to spilling thousands of gallons of raw sewage behemoth as THE highest selection criteria for the selection committee. Only after this slight of hand action did the Tri-W site float to the top of the septage pile.

Now I want you to think about that for a moment. The "old" board favored the Tri-W plant by the slim margin of 3 to 2. Your Board uttered those now infamous words, "If

you don't like the project, change your board." With a slim margin of 3 to 2, the town needed to only remove one of the prior directors to change the tone of the board. All of the parties running (and subsequently elected) were running on a very clear platform. They were against the Tri-W site and the Tri-W project. So the town only needed to remove one of the old directors to effect a change in the direction of the board. The town not only rejected one of the old board, they removed all three board members that supported Tri-W. This Tri-W project should never have progressed as far as it did. It was always a bad project for our town.

**Additionally, as you are aware, we have just had another election. At this time, both incumbents running for office have been re-elected. The slate of two people running on the old "Dreamers" (read Tri-W) platform was defeated. This is again further evidence that the town does want a project, but not the Tri-W project.**

**There are a Great Many Procedural Issues in Question in the Proposal to Issue These CDOs.**

1. We did not receive our proposal by certified mailing.
2. We were all denied our right to an individual hearing on this issue.
3. There is no mention of affordability for your proposed action.
4. There is no mention of an affordability study for your proposed actions.
5. There was no timely or consistent enforcement of water board laws in this case. The Resolution upon which you are basing the proposed CDOs is over 20 years old. As such, it is stale and should not be enforced.
6. Water Quality Enforcement Policy, revised February 19, 2002 talks, again, about creating an even playing field, and about illegal dischargers having a competitive advantage over legal, regulation following dischargers. This action does nothing towards meeting the Board's goals in this regard. There is no competitive advantage to be gained here. In fact, complying with the proposed pumping regiment **grants** a competitive advantage to those living outside of the prohibition zone, to those who have not yet received a proposed CDO, and to those who currently own vacant property. Further, it grants a competitive advantage to businesses operating inside of the Prohibition Zone inasmuch as no businesses were selected for this action. **Notwithstanding this competitive advantage, we have, in fact, had our septic tank pumped, inspected, and certified to be in working condition. An invoice is attached as an exhibit.**
7. Targeting or selecting **only 45 homes out of nearly 5,000** inside of the entire Prohibition Zone again goes against the Board's stated policy of administrating their policies in a fair and consistent manner.
8. Water Quality Enforcement Policy revised February 19, 2002 states enforcement actions should be taken "as soon as possible" after discovery of violations. Again, this is a stale action taken at an improper time.
9. Issuing these CDOs does NOT promote the water board goals of promoting "an even playing field". In fact, staff's analysis of the situation is incorrect. Staff improperly concludes that, "the Discharger has incurred little or no costs since then [1988] to comply with the prohibition. The burden of any monitoring or reporting required by this Order is reasonable in light of the severe pollution that has resulted from operation of septic systems in the prohibition area.... Actually, staff is attempting to promote an uneven playing field by issuing these CDOs in

light of the fact that the people living outside of the prohibition Zone will not incur one cent of costs due to these CDOs. ~~Further, if these CDOs are in fact issued, the homeowners of Los Osos who receive them first will incur substantially more cost than people forced to pump their septic tanks at some future date.~~

10. These proposed actions are not consistent with other similar circumstances and resultant enforcement actions throughout the State of California.
11. The proposed actions demonstrate absolutely no nexus between the proposed pumping requirement and a return to compliance with 83-13. It is merely a band aid. In and of itself the actions have no method with which to cause a sewer or any other septic system to be built. Therefore, it is designed as a punitive measure and against Board policy.
12. There have been no progressive enforcement actions taken against the residents of Los Osos. We went straight from a 1983 resolution to proposed CDOs in 2006.
13. There have been no actual actions taken by the board to inform ANY of the proposed recipients (or even any of the residents of Los Osos) of any violation, of the rules arising from Resolutions 83-12 and 83-13, of the fact that we are allegedly discharging illegally, or that there may be Board actions initiated against us. Any and all information we have received has been through newspaper articles, word of mouth, innuendo or rumor.
14. As per your own July 9, 2004 staff report, "Project delays, and noncompliance with the Time Schedule order, are clearly beyond the Los Osos CSD's ability to control." If the whole CSD cannot control the noncompliance with the Time Schedule Order, it is clearly beyond our control to have started or stopped the Tri-W project. We are being penalized for actions which are beyond our control.
15. Per your July 9, 2004 Staff report, under "Cons" to issuing Cease and Desist orders against individuals. "It should be noted however, that the vast majority of voters in Los Osos have supported the project at every step." Staff is suggesting how completely unfair it would be to actually issue CDOs against individual homeowners – homeowners how are trying to build some sort of waste water treatment facility.
16. The Regional Water Board maintains a list of enforcement prioritization available for public review (subject to redacting any confidential informant information). A review of this Public Enforcement Priority List dated March 27, 2006 further supports my position. ALL of the Agencies listed on the document are just that – Agencies or commercial companies. The heading to the report even states, Agency. The next column on the report is titled, "Facility". And when you read through the report, you quickly realize all of the parties listed on this high priority enforcement document are large commercial entities. California Department of Corrections, Coast Unified School District, the City of Hollister, and the City of Pismo Beach. Large, commercial entities. Each and every one of them. Then along we come. Individual homeowners. In fact, we're not even on the list, yet here we are in this whole situation. The point, once again, is that CDOs are not designed, were not designed, never have been designed, and are not the proper tool to use against individual home owners. CDOs are designed for large commercial entities or small commercial entities with large propensities for pollution.
17. I reviewed your enforcement statistics for the last six years. Statewide, there have been only 189 Cease and Desist Orders issued for the last six years **TOTAL**.

Your attempt to issue nearly 5,000 CDOs to all of the homeowners in the Prohibition Zone is unprecedented and unheard of. It is again a violation of policy – it has simply never been done.

### **Site Specific and Scientific Issues**

Our property has between 30 to 50 feet of ground between the leach field and the ground water. Much of the literature states that denitrification occurs in as little as two to four feet of sand. Further, sand is one of the best natural filters known for removing nitrates from water.

The nearest test well to our house, well 18B1 last measured 2.4 mg/l of nitrates in October, 2005. This well is only sitting on between 10 to 20 feet of soil separation to groundwater. Our house has two to five times as much soil separation to groundwater as this nearest well. Yet the well still only shows 2.4 mg/l of contamination. This is the most recent test available.

The RWQCB has provided no evidence that our home is even polluting. They have taken no lysimeter readings from our home. The CSD has taken no readings from our home. No one has taken any water quality readings from our septic tank, from our leach field, from six feet under our leach field, or from anywhere else on our property. So no one knows how much, if any, we are contributing to the ground water situation.

The proposed actions may do much more harm than good. ~~No one can say for certain what will actually happen to the septic tanks and septic systems in our houses, because no one has ever pumped out their systems at this rate. I have heard conjecture that the entire microbial action in the tanks will be so out of balance that the pollution coming out of the septic tanks will actually increase. I have even heard much speculation that leach fields will start to accumulate sludge, clog, and fail shortly after starting this 60 day program. Will the Water Board own up to their responsibility if this happens and pay for future repairs? I don't think so.~~ **While requiring property owners to pump their septic tank only one time is a relatively small burden on a homeowner, it is a burden nonetheless (see prior argument). Irregardless of this burden, I remind the Board that our family has already pumped our tank and passed inspection. However, there is more.**

**The real cost of this prosecution cannot be measured in pounds or inches, in time or money. The real cost of these proceedings is the stress, strain and anxiety caused by the threat of fines looming over our heads. Los Osos is a small community, yet we have a disproportionally high population of seniors and people with varying degrees of disability. This added pressure weighs on the shoulders of the whole town. You cannot measure it; you cannot weigh it. But you can feel it in the air, and see it in the eyes of the citizens of the town. It hovers in the air like our infamous fog, stopping just outside of the probation zone. The holiday season contains the highest stress causing months of the year. This enforcement proceeding compounds this stressful situation ten fold.**

Nitrogen levels in the Los Osos area have dramatically **decreased** over the last 20 years.

The sampled well readings for the year 1983 totaled 902 mg/l of nitrates. These same wells totaled 248 mg/l of nitrates in October, 2005. That shows a net difference 654 mg/l of nitrates over a 23 year period wherein the Water Board states we are in a near state of emergency with our nitrate levels. Put another way, it represents a decline in nitrate levels in our drinking water of **over 72%**. This decrease is without any draconian ~~septic tank pumping regiment, and without any~~ **measures or fines** against the residents of Los Osos. At the very least, it should prompt a dialog between Water Board (and/or Regional Water Board), Los Osos CSD, and the citizens of Los Osos. Dialog, not monolog.

**Thankfully, it has. A few citizens have already signed a settlement between themselves and your office. I know many more are anxiously waiting for some very slight verbiage changes so that they too are comfortable in signing a settlement agreement. Our family is one of them. I will address this issue shortly.**

Further, there are very, very serious concerns over the accuracy of the nitrate readings over the entire 23 year period from 1983 up to the present. Nationally accredited water engineers like R. Glenn Stillman and Wade D. Brim have stated repeatedly under oath and through deposition that the wells used for monitoring here in Los Osos are improper, inadequate, built out of State specifications, and are outright illegal. They should not now nor ever have been used to test our aquifers. In fact, they state the wells amount to nothing more than ordinary funnels to funnel surface pollutants directly into our upper aquifer. **To state it another way, their claim is that these test wells actually increase the nitrate loading of our water.**

Even when they have been rebutted by Cleath and Associates, I have seen declarations further contending the Cleath responses are incorrect, and the wells are as stated above. This gives a net result of making it extraordinarily difficult if not altogether impossible to discern the truth about where the nitrate levels are actually at in our water tables.

However, even if you accept the readings at face value, they are down 72% from 1983. Even today, if you **can** take the ~~latest well reading (October, 2005) reading,~~ then total up all 25 wells (including the terribly high nitrate level wells i.e. 28mg/l and 21 mg/l). When you average out all of the testing wells in the Los Osos basin, the total nitrate level today stands at 10.51 mg/l. That's all, 10.51! Now I will stipulate that *is* above the standard of 10 mg/l, and I will ~~stipulate~~ **agree** we need to address this issue in Los Osos, but not with Cease and Desist orders. This is not the manner with which to address this problem. This is *just barely* over the legal limit. Then when you take into account the fact that 83-13 is over 20 years old it further supports the argument there is no fire to put out. We do not need to take these drastic measures. There are better, much better ways to handle these issues. **Again, read "settlement agreements".**

**There are a Great many Legal Issues as Well.**

Your Board does **not** have the legal authority necessary to issue a Cease and Desist Order against our home or against our property. Water Code section 1831(a) states, "When the board determines that any person is violating, or threatening to violate, any requirement described in subdivision (d), the board may issue an order to that person to cease and desist from that violation." Section 1831(d) states, "The board may issue a cease and

desist order in response to a violation or threatened violation of any of the following:”. Finally, section 1831(d)(3) states, “Any decision or order of the board issued under this part, Section 275, or Article 7 (commencing with Section 13550) of Chapter 7 of Division 7, in which decision or order the person to whom the cease and desist order will be issued, or a predecessor in interest to that person, was named as a party directly affected by the decision or order.”

Resolution 83-13 does not name my family, the family who we purchased our house from, nor does 83-13 identify our property. We have not been named “as a party directly affected by the decision or order”.

Another key issue concerning these proposed actions is contained within Water Code, Section 1835. Water code section 1835 states, “As used in this chapter, “person” includes any city, county, District, the state, or any department or agency thereof, and the United States to the extent authorized by law.” There you have it. Crystal clear proof that cease and desist orders are not to be issued against individual home owners. Your code does not authorize it. Our family is not a city, a county, a district, the state, a department or agency of the state, nor the United States. We are private citizens. As such, you do not have the authority by law issue these Cease and Desist orders.

We are NOT in violation of Resolution 83-13. Resolution 83-13 reads in part, “Failure to comply with any of the compliance dates established by Resolution 83-13 will prompt a Regional Board hearing at the earliest possible date to consider adoption of an immediate prohibition of discharge from *additional* individual and community seware [misspelling in original document] disposal systems.”

~~There are two points to be made here. First of all, Our home was built in 1979. As such, our home was in existence at the time 83-13 was adopted. 83-13 states, “to consider adoption of an immediate prohibition of discharge from *additional* individual and community seware disposal systems.” As our system was in existence at the time 83-13 was adopted, it was an **existing** disposal system. 83-13 seeks to ban discharges from **additional** disposal systems. Therefore, 83-13 does not apply to our home. Period.~~

~~Further, 83-12 states, “Failure to comply with any of the compliance dates established by Resolution 83-13 will prompt a Regional Board hearing at the earliest possible date to consider adoption of an immediate prohibition of discharge from *additional* individual and community *seware* disposal systems.” Our home does not, nor has it ever had a *seware* disposal system. In fact, I do not even know what a *seware* disposal system is. Therefore, again, 83-13 does not apply to our home.~~

Our home is licensed by the County of San Luis Obispo as a single-family residence. This license is in the form of a building permit. It is building permit number 35735. This permit was approved as final on November 13, 1979. It included a permit for our plumbing, which in turn included a permit for our septic tank. Therefore our home was built in accordance with the County of San Luis Obispo rules and regulations at the time it was constructed. It passed all required inspections and approvals. It is a legally built single family residence, including all of the wastewater generated by our home. If subsequent permits approved by the County of San Luis Obispo caused the densities of our homes, and therefore our leach fields as well, to become so dense as to affect the



quality of the effluent leaving our leach field, then the County of San Luis Obispo bears the responsibility for approving such subsequent permits. Not our family, nor anyone else in Los Osos.

Further, we currently have another building permit active from the County of San Luis Obispo. It is an electrical permit, permit number PMT2004-01522. At this time it is due to expire in August, 2006 **shortly**. If there were any legal issues affecting our home, then the County would not have issued this current permit. Again, our home is properly permitted, and was properly permitted, inspected and approved since it was built in 1979. It precedes Resolution 83-13 by nearly four years.

These proposed CDOs use resolution 83-13 as a basis in law to issue the CDOs. However, nowhere in Resolution 83-13 is my family named. Nowhere in 83-13 is our home listed as being in violation. Nowhere in 83-13 is the name of anyone who ever owned our home, nor any mention of our home. How can you take an enforcement action against a homeowner when they have never been identified as a violator of this resolution? In fact, not only have we never been given notice of being in violation, we have never even been told that we may be subject to any actions from the RWQCB whatsoever. All of our information has come via newspaper articles, neighborhood gossip, and CSD meeting dialog. Neither the WQCB nor the RWQCB have ever notified us that we were in violation of anything. Yet you are now attempting to take enforcement actions upon us.

~~Furthermore, there are incredible ramifications of these proposed CDOs in terms of the environment. The Board has stated its intentions to issue CDOs against all of the houses inside of the prohibition zone. I believe there are approximately 4,800 homes inside of the prohibition zone. This will amount to between 120 and 150 additional truck driving through town each and every weekday for the next four years. This will cause a tremendous increase in air pollution. Remember, these are all black smoke belching, noisy, industrial diesel trucks. Additionally, every one of these truck must run its engine while idling at the citizen's home, then run the pump engine while pumping the tanks.~~

~~Along with the increased air pollution, we will have additional noise pollution. Again, remember these are industrial diesel trucks. We will have a huge increase in airborne particulate matter in the form of the particles that come out of the septic tanks, such as sludge, slime and scum. We will have an incredible increase in odors permeating the town, and undoubtedly in odor complaints filed with the Regional Air Quality Control Board. We will have further increases in odors and airborne particles as these trucks are designed to only pump out one or two tanks at a time. Then they must either drive all the way to Santa Maria to dump their payload, or they must transfer their payload to a larger truck for hauling to Santa Maria.~~

~~If they drive round trip to Santa Maria and back, it is quite easy to see how quickly the tons of additional airborne particulate matter would add up in the form of diesel exhaust. If they transfer their contents to a larger, transfer truck, it is similarly easy to see how the particulate matter in the form of septage will leak out through the transfer process and go airborne in our town, along with those wonderful septic tank odors. And remember, besides just annoying, the septage is a veritable laboratory of virus, bacteria, and other microorganisms just waiting to go airborne and infect our town. Remember a few~~

~~paragraphs back I spoke of our elderly, fixed income population. Bear in mind elderly, fixed income also means elderly and less immune to virus and bacteria. In a worst case scenario, you could have a massive spill causing a small epidemic in our little town. All of this due to the act that maybe 5 to 10 homes have their septic tank pumped out on any given day in Los Osos, yet your Order would require upwards of 120 homes to have their tanks pumped out each and every weekday. And I seriously doubt that it could be accomplished during the week. Truck failures, inclement weather, problems at the treatment plant, and some failed systems (probably caused by these pumping requirements) would undoubtedly mean we would have pump trucks running seven days a week through our little town. Day in and day out. This brings us to yet another substantial legal issue.~~

~~In the proposed Cease and Desist Orders, you state, "This enforcement action is being taken for the protection of the environment and as such is exempt from the provisions of the California Environmental Quality Act (Section 15321, Chapter 3, Division 6, Title 14, California Code of Regulations, "CEQA"). In addition, the Septic System is an existing facility and this Order allows no expansion of use beyond that previously existing so this enforcement action is exempt from the provisions of CEQA (Section 15301, Chapter 3, division 6, Title 14, California Code of Regulations)." I believe you couldn't be more wrong.~~

~~California Code of Regulations, Title 14, Division 6, Chapter 3, Article 19 deals with Categorical Exemptions to the California Environmental Quality Act (CEQA).~~

~~California Code of Regulations, Title 14, Division 6, Chapter 3, Article 19, Section 15300.2(a) states, "Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies." There are a great many areas of Los Osos that are State and I believe even Federally protected habitat. We have red legged frogs, and kangaroo rats. We have dwarf or pigmy oak trees. We have a lot of environmentally fragile issues here that I don't even know about. The point is, these areas of concern are all over Los Osos. That makes it a very precarious area for digging and trampling through property, and dragging suction hose across yards and into back yards.~~

~~California Code of Regulations, Title 14, Division 6, Chapter 3, Article 19, Section 15300.2(b) reads "Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant." I cannot even imagine trying to argue that ordering over 100 diesel trucks to pump every septic tank in town dry for the next four year would not have a significant impact. The argument would simply be beyond my comprehension.~~

~~Then there's California Code of Regulations, Title 14, Division 6, Chapter 3, Article 19, Section 15300.2(c). Sections 2(c) states, "Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." Again,~~

if pumping the town dry with over 100 trucks per day for four years is NOT an unusual circumstance, then I have absolutely no idea what would be considered an unusual circumstance.

My point is simple. ~~These proposed CDOs are NOT exempt from the CEQA requirements. Period. Therefore, all CEQA rules and regulations must be strictly adhered to if you continue your plan to implement these 4,800 CDOs. Any attempt to circumvent the CEQA requirement could be construed as an attempt at an illegal activity and even possibly cause criminal charges to be brought.~~

~~These same arguments may even apply to the Coastal Commission as well. Unfortunately Time constraints have forced me to abandon that issue for now.~~

### **There has Been No Affordability Study Done regarding this Proposed Enforcement Acton Just as There was Never an Affordability Study Done for the Tri-W Project.**

The Tri-W project was truly a bad project (for our town) from the start. One of the critical issues with that project was the enormous per capita cost we would have incurred in our small town. **As I previously stated**, Los Osos is comprised of a great many elderly citizens and a surprisingly high number of disabled or limited ability people as well. These people live with little means on fixed incomes. The Tri-W project NEVER took a look at the affordability of that project with regards to the citizen's ability to pay the projected monthly costs. Instead, they chose to use the County Assessor's roles for property values in our little community. Unfortunately, as we all know, anyone who has lived in our town for more than just a few years is in the awkward position of being "asset rich and cash poor." I suspect over 33%, maybe even as high as 50 or 60% of our entire town could not afford to buy their own home in today's market. The real estate appreciation of our beautiful coast is thus a two edged sword. Yes, we have fantastic equity built up in our homes should we ever decide to sell and move away. I say move away because since the entire Central Coast has appreciated in a similar manner, if you could not afford to buy your own home today you could also not afford to buy in nearly any other part of our entire County. So I repeat. Should you decide to sell and move away, or with our aging population, should an heir of a homeowner from Los Osos decide to sell a home or even a vacant lot, there would be a tremendous gain on the property. For people that bought in the early 1970s, their gain could easily exceed \$600,000.

But therein ~~lays~~ **lies** the problem. If one looks at the County Assessor's roles, Los Osos appears (on paper) to be a rich town. A town that could have easily afforded the "measly" \$200 per month sewer bills **that we would have received had Tri-W been built.** ~~But This is not true correct.~~ Most of the town cannot afford a \$200 a month sewer bill. This was a key factor in recalling all three of our illustrious Board members. ~~If our town could not afford a \$200/month sewer bill, how on earth does your Board expect them to pay a \$200/month pumping your septic tank bill? Staff has stated, "Moreover, the Water Board adopted the prohibition in 1983, and it went into effect in 1988, and the Discharger has incurred little or no costs since then to comply with the prohibition. The burden of any monitoring or reporting required by this Order is reasonable in light of the severe pollution that has resulted from operation of septic systems in the prohibition area, and the long history of violations of the prohibition at the Site." But this is simply not~~

~~correct. Let me reiterate. Most of the residents of Los Osos could not have afforded to pay a \$200 / month sewer bill, and these same residents similarly cannot afford to pay a \$200/month pump you septic tank bill. I realize staff reports the cost at \$100/month, but you don't need a PhD in economics to understand that the cost of pumping septic tanks in Los Osos will go up immediately following any adoption of these CDOs by the Board. Your Board is attempting to pick up where our old board left off. RUNNING THE ELDERLY, THE POOR, AND THE DISABLED OUT OF THEIR HOMES AND OUT OF TOWN. It's simply unconseionable.~~

**Yet there is still hope. The Ripley proposal has shown us all that an environmentally friendly, sustainable, affordable sewer can be built out of town. Most of the town looks forward to this project. We are awaiting our seat at the table with the County of San Luis Obispo (due to AB 2701) to come up with a solution to all of your concerns, the County's concerns, and our concerns. This process officially begins January 1, 2007, although many have already spoken to county staff and Supervisors regarding this project.**

If you really want to assign some blame for our current state of affairs, you need look no further than the mirror. When your Board adopted resolution 83-13, you struck a severe blow to our community and a nearly fatal blow to any project that will ever be proposed. My understanding was that staff and the County of San Luis Obispo had recommended the Los Osos Prohibition Zone (LOPZ) be drawn along the same lines as the Los Osos Urbanization Zone. In other words the whole area now served by the Los Osos Community Services District (LOCSD). This recommendation was not followed. Instead, a line was drawn that split our town in two. Those in the zone and those outside of the zone. By this action, your Board more than any actions on Los Osos' part caused us to get to where we are today. Allow me to explain:

1. People living inside of the Prohibition Zone and people with buildable lots inside of the Prohibition Zone have waited nearly 20 years to build new homes or remodel their existing home to add bedrooms and bathrooms as part of their remodel.
2. People living inside of the Prohibition Zone are truly fed up and tired of the town being ripped in two. There is even a current movement to completely dissolve the entire LOCSD. The sad thing is the movement is led by the ousted CSD Board members. (As an aside, these very actions show the true intent of the old board members, and their intent to build at Tri-W. They are acting with total disregard to the town and are perpetuating the rift in our fabric instead of trying to pull our town back together. But these same actions validate the recall of those same three prior Board members.) **As you are probably aware, LAFCO denied the petition to dissolve our CSD.**
3. People living inside of the Prohibition Zone want some permanent solution so that there is no more Prohibition Zone.
4. If these CDOs are issued, people living inside of the Prohibition Zone will see an immediate drop in their property values of about \$100,000 PER HOME.

Now, let's look at the people outside of the Prohibition Zone.

1. People living outside of the Prohibition Zone have NO INTEREST WHATSOEVER if the Prohibition Zone ever goes away.
2. The longer the Prohibition Zone exists, the quicker the values of their homes rise outside of the Prohibition Zone. Just think like a prospective home buyer.
  - a. If they buy inside of the zone, they're facing a monthly sewer fee from anywhere between \$50/month to maybe \$300 or \$400/month. No one can really tell them how much it will be.
  - b. If they buy inside of the Prohibition Zone, they cannot add a bedroom or bathroom to their new home. And they have absolutely no idea how long it will be before they can do so.
  - c. Now, if they buy outside of the Prohibition Zone, they can start the application for their remodel permit on the same day they close escrow.
  - d. They can take that same \$50 to \$400 / month sewer charge and pay for the remodel.

When you look at it in this light, you begin to understand my statement above that the Board is as much responsible for the predicament we face today as anyone by their adoption of Resolution 83-13. You begin to understand why ALL of the votes on any issue having to do with this are so close. Although it is in the best interests of the Los Osos residents living inside of the Prohibition Zone to vote for a sewer and to vote to move forward with our whole town, IT WILL NEVER be in the best interests of those living outside of the prohibition Zone to vote for a sewer.

So I have a solution. Your document Staff Report for Regular Meeting of July 9, 2004, listed several interesting options for our community.

1. Rescind Resolution 83-13. There is a lengthy discussion contained in the report. Your staff lists the pros to this action as, "Water quality impairment is caused by existing discharges in Los Osos. Resolution of existing water quality problems (a community sewer) may be more readily approved by the Coastal Commission if Resolution 83-13 were not being used as a means of prohibiting growth in Los Osos. In short, the Regional Board resolution may be used to undermine efforts to resolve the larger water quality problem (i.e., roughly 10% of potential loading and therefore 10% of the total wastewater related problems are being prevented by the prohibition, but 90% of the problem is being prolonged by the prohibition...)."
  2. Once 83-13 is lifted, you will need to stop the proposed enforcement and issuance of these CDO actions.
  3. Once 83-13 is rescinded, begin work on a truly comprehensive basin plan for Los Osos. This plan would need to be draw along the same borders as the jurisdiction for the LOCSD. In this fashion, all of the community would have a stakeholder's buy-in for an affordable, sustainable, cost-effective wastewater treatment plan.
  4. Further, all of Los Osos would have a stake holder's buy-in for a comprehensive salt water intrusion strategy.
  5. Growth in Los Osos would still not "explode" as we have not yet resolved our salt-water lower aquifer issues.
  6. This would be a win-win-win-win scenario. The WQCB would win in that there would be support gained from the community to move forward with a "good" project as stated above. The RWQCB would win in that they would no longer have Los Osos illegally discharging in alleged violation of resolution 83-13. The

Los Osos CSD would win in that they would be able to devote their full attention on a viable wastewater treatment plan instead of getting pulled in several directions all at the same time. These directions include:

- a. The Dissolve the CSD movement (**off of the table for now**).
- b. Defending themselves against these same proposed CDOs as we individuals are doing.
- c. Attempting to garner support from the people living outside of the current prohibition zone.
- d. Striving to include these people from outside of the prohibition zone in rate paying efforts as the people living inside of the prohibition zone deem it totally unjust and inequitable.
- e. Trying to include the people from outside of the prohibition zone in the rate efforts since we all draw from the same water basin, we all derive services from the Los Osos infrastructure, i.e. Sheriffs Department, Fire Department and Medical response.
- f. **Although the dissolution was denied, we are now faced with our Chapter 9 Bankruptcy debacle.**

The citizens of Los Osos. Once Resolution 83-13 is rescinded, the huge rift dividing our town will fade away like ripples in a pool of still water.

**On October 12, 2006, Gregory Murphy (of Burke, Williams & Sorensen) submitted their evidence package on behalf of the Los Osos Community Services District (LOCSO). I will now capture some very brief highlights of that document. Additionally, I wish to incorporate by reference their document and its attached exhibits into this package as well.**

**Despite the RWQCB's Postponement of these Proceedings, Substantial Due Process Concerns Remain Unresolved.**

**In Light of Previous Statements on the Record in the CSD's Administrative Civil Liability Hearing, the RWQCB cannot Offer an Unbiased Forum for the Hearings.**

**The Change in the Makeup of the Prosecution Team does not Relieve the Bias and Unfairness Created by the Original Team.**

**The RWQCB Itself has been Influenced and Cannot Now Disclaim that Influence.**

**Current RWQCB Members Cannot Adjudicate These or Future CDO (Septic System) Enforcement Actions.**

**The Legality of this Process is Severely Compromised in Light of Previous Actions by the State and Regional Boards.**

**Citizens Have No Control Over the Septic Permitting Process.**

**Mandating the Manner of Compliance with the CDOs Violates the Porter-Cologne Act and CEQA**

**These Proceedings Were Initiated in Violation of the Bagley-Keene Act.**

**State Regulations Regarding Doing Business with Entities Subject to CDOs Make CDOs Inappropriate Enforcement Tools for Individuals.**

**The Potential for a Change in the Enforcement Tool of Choice Further Prejudices the Targeted Parties**

**Morro Bay Has Been Given Almost a Decade to Complete a Mere Upgrade in an Existing Plant, while the RWQCB Attempts to Force Los Osos to Site and Build an Environmentally Unfriendly Plant in Just Four Years.**

**The CDOs are Based on Faulty Scientific, Technical, and Environmental Analyses.**

**Further, Changes in the Porter-Cologne Act Make Scientific Challenges to Resolution 83-13 Proper at this Time.**

Finally, there is the issue of a settlement. Nearly all of us would gladly sign a reasonable settlement in a heartbeat. We could put down our weapons and end this battle. Similarly, I suspect many at the RWQCB would also like an amenable solution to this conundrum. Mr. Sato and Mr. Shipe have worked feverishly on an agreement. It is **EXTREMELY** close. Our concern hinges on the issue of the January 1, 2010 date. I fully understand the RWQCB's willingness to extend that date as soon as a project has a TSO or has made reasonable progress. I fully understand the RWQCB overwhelming frustration in dealing with our town for the last 20 to 30 years. I completely understand the RWQCB's fears that we are once again just trying to stall a project.

Now, I need your Board and staff to understand the citizen's of Los Osos' concerns. We know we need some type of wastewater treatment facility. It has become apparent, at least to me, that nation-wide there are issues and concerns about nitrates in our drinking water supplies.

It has also now been pointed out that nation-wide, the United States EPA recognizes that "old school" behemoth gravity sewers are becoming obsolete. They are not and never were a good fit for a tiny town such as ours. They are extremely energy wasteful and non-sustainable.

Your Board and staff need to understand Los Osos is **NOT** anti-sewer. We have not been for about the last eight years. We just never wanted the Tri-W sewer. Also, your Board and staff need to understand the destructive lies that have been propagated for about these same last eight years. Our former CSD elected officials lied to your Board and staff as to their true intentions, then they lied to our town as to what your Board and staff had told them. They spent money like drunken sailors in an attempt to bankrupt our town once it was clear they could not sustain their seats through the recall election. This statement is supported by the fact that the town is currently in a Chapter 9 Bankruptcy. There's so much more but time constraints do not allow me to explore these issues at this moment.

As I stated above, the settlement is EXTREMELY close to garnering support from probably 25 to 35 more people. Our only fear is the same fear we have been expressing for the last six years. The January 1, 2010 date. You may have not heard of this for the last six years because we were expressing this concern to our elected officials. The same officials I just told you have lied to your Board and our town. It is beyond our control to guarantee that a project will have broken ground by January 1, 2010. We cannot even guarantee we will have plans by then. I can assure you the entire town is now awake and alerted to this issue. I can state we look forward to working with your Board, staff, and the County in deciding on an affordable, sustainable, environmentally friendly project. But we cannot guarantee the future.

Your settlement requires us to do just that. To try and predict the future. It lists January 1, 2010 as a "target" date, but it also lists it as a "drop dead" date. The settlement continues to threaten fines of "up to \$5,000 / day" if we fail to comply. Fail to comply with a situation beyond our control. You may as well ask us to agree to hook up to the project within 60 days of withdrawing our troops from Iraq. We have about the same degree of control over both situations.

If the settlement were to require us to submit a plan to your board no later than January 1, 2010 as to how we proposed to cease discharges from our property, it would go a long way towards obtaining those signed agreements.

Finally, the settlement could use the 83-12 and/or 83-13 resolutions as the basis of the settling document instead of a CDO or an ACL or even a CAO. In that manner, the citizens of Los Osos would know your intent is not to wait and "pounce" on us January 1, 2010 with fines, but to truly seek an amenable resolution to these enormous issues at hand. Were these two last changes to be made to the Sato/Shipe proposal, many more people would be amenable to signing the document and ending this "Battle of the Titans".

In summary, I again request you to rescind the proposed Cease and Desist Orders and any and all enforcement actions against the citizens and town of Los Osos. ~~We have had inadequate time to prepare our defense against these proposed actions.~~ You are attempting to hold individuals accountable for actions beyond their control. A great many of your own Enforcement Policies have been violated by these actions and proposed actions. A CDO was never intended to be used against individuals; rather, it is a tool to use against industry and industrial polluters. There are site specific facts dealing with our home that mitigate any suspected pollution loading of the upper aquifer from our home. There are a great many unresolved legal issues. ~~Your Board has improperly concluded these actions are exempt from CEQA requirements. Issues abound concerning the fact that most of the town cannot afford to comply with these proposed orders.~~ There are serious questions regarding the accuracy of the monitoring well readings, ~~and equally serious concerns regarding the viability of the proposed pumping schedules.~~ Finally, Also, there is the issue of splitting our entire town in half by the Board's actions in the adoption of Resolution 83-13.



**Next, I would like this document to serve as re-submitting my original argument package to your Board and staff to retain that information as part of my defense material. That material is already in your possession.**

**Lastly, I wish to remind the Board I reserve my right to join in using others' evidence, documents, witnesses, arguments, and testimony as may be needed in defending against the proposed Board actions.**

Please stop these actions at this level before any more damage is done to our town and our homes. Thank you for your time in reviewing these issues.

I certify the information contained herein is true and correct to the best of my knowledge.

A large, solid black rectangular redaction covering the signature area of the document.

**Attachment – pumping receipt**

**From:** [REDACTED]  
**To:** "Michael Thomas" <Mthomas@waterboards.ca.gov>  
**Date:** Wednesday, November 15, 2006 3:45:09 PM  
**Subject:** Evidence submitted by Gail McPherson and Rob Shipe

Mr. Thomas:

In the event the evidence submitted by Gail McPherson / Rob Shipe is deemed stricken due to any technical concerns, I wish to incorporate it by reference into my documents as well.

Thank you.

[REDACTED]