

JUNE 10, 2005

STATE WATER RESOURCES CONTROL BOARD
OFFICE OF CHIEF COUNSEL
1001 "I" STREET, 22ND FLOOR
SACRAMENTO, CALIFORNIA 95814

ATTN: Elizabeth Miller Jennings, Staff Counsel IV
FAX: 916-341-5199

BEFORE THE STATE WATER RESOURCES CONTROL BOARD
PETITION FOR REVIEW AND REQUEST FOR ACTION

I. Name and Address of the Petitioner: Bill Rihn, President, South Laguna Civic Association, PO Box 966, South Laguna, Laguna Beach, California 92651

II. The Action Being Petitioned:

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,
SAN DIEGO REGION; ORDER NO. R9-2005-132. AN ORDER
RESCINDING CLEANUP AND ABATEMENT ORDER NO. 99-211
FOR THE COUNTY OF ORANGE, ORANGE COUNTY FLOOD
CONTROL DISTRICT AND THE CITY OF LAGUNA NIGUEL

III. Date of Regional Board Action: May 11, 2005 (Exhibit A)

IV. Statement of Reasons this Action was Inappropriate and Improper:

The Order Rescinding Cleanup and Abatement Order No. 99-211 issued by the San Diego Regional Water Quality Control Board (SDRWQCB) is inappropriate and improper in that it violates laws and regulations pertaining to enforcement of Cleanup and Abatement Orders (California Water Code Section 13304); the SWRCB Water Quality Enforcement Policy (February 19, 2002; pages 3,4,11,26, 39,42); the Porter-Cologne Clean Water Act; and is a discriminatory violation of the State of California definition governing Environmental Justice (Government Code Section 65040.12 and Public Resources Code Section 72000).

Order No. R9-2005-132 was issued to the County of Orange "County" and the City of Laguna Niguel "City" following a "Request to Rescind Cleanup and Abatement Order No. 99-211" submitted January 26, 2005 acknowledging "...the outfall of JO3PO2 continues to show elevated levels of fecal coliform..." (Exhibit B & C)

V. How the Community is Aggrieved:

The members of the community of South Laguna represented by the South Laguna Civic Association, established 1946, is aggrieved by the subject SDRWQCB action since Order No. R9-2005-132 knowingly, willfully and intentionally perpetuates a threat to health and safety and to contribute to degradation of local creek and coastal water resources.

As indicated in the First Quarter Aliso Watershed Reports (Exhibit C) REC 1 Standards for Human Contact "... were not met 99% of the time and the REC-2 54% of the time." The 16th Quarterly Report indicates fecal coliform levels only 30% below initial First Quarter Studies. The SDRWQCB, City and County have failed to achieve compliance with Cleanup and Abatement Order No. 99-211.

In allowing the County and City to continue to discharge urban runoff polluted water flows, the members of the SLCA are denied access to safe, unpolluted coastal recreational opportunities while exposing them to known respiratory and digestive illnesses. The incremental and cumulative discharge from JO3PO2 and other Aliso Watershed storm drains also knowingly contributes to potential health risks from consuming locally caught fish.

Likewise, potential private property values are threatened by disclosures of public health hazards emanating from polluted coastal waters. Damage from urban runoff pollution to critical kelp habitats and marine mammals characteristic of County Marine Reserves in South Laguna are well documented in the scientific literature.

The Aliso Watershed has more than 64 additional storm drains with fecal coliform levels equal to or in excess of JO3PO2. The inability of the SDRWQCB to achieve compliance to CAO 99-211 for only one storm drain suggests a pattern of failed interventions portending a dangerous precedent of chronic future water pollution to South Laguna and the general beach visiting public.

VI. The Action Petitioner Requests the State Board to Take:

The South Laguna Civic Association (SLCA) seeks a review of the laws, regulations and facts pertaining to Storm Drain JO3PO2 discharge and Action to Reinstate CAO 99-211 until such time that full compliance is achieved.

Failure to mitigate or comply requires the SDRWQCB to be directed to California Water Code Section 13304(a) and following to seek an injunction against the County and City or perform the work itself.

Concurrent with this request, the Petitioner seeks an Emergency Stay of SDRWQCB Order No. R9-2005-132 due to substantial immediate and potential harm from known health risks associated with urban runoff conveying elevated levels of fecal coliform contamination to the Petitioner since:

1. Substantial harm to the community of South Laguna will continue to occur this summer from exposure to dry-weather flows of contaminated urban runoff at JO3PO2 if a Stay is not granted. Furthermore, the action to Rescind CAO 99-211 prior to full compliance will establish a dangerous precedent in the Aliso Creek Watershed and other impaired watersheds in the State of California to the detriment of South Laguna public health and safety as well as the protection of natural resources.
2. Neither the City, County, SDRWQCB nor public will incur substantial harm from issuance of a Stay. The South Laguna Civic Association, in fact, will benefit from incremental reduction of contaminated flows from JO3PO2 into creek and coastal receiving waters. Establishing a pattern of enforcement and full compliance with cleanup and abatement laws will initiate additional timely actions by the SDRWQCB to improve water quality in the Aliso Watershed and elsewhere. Costs associated with the Stay can be minimized by fines, deployment of water conservation measures and revenues generated from beneficial reuse opportunities of 160,000 gallons of urban runoff per day in the JO3PO2 subwatershed.
3. As indicated in this Petition, substantial questions of fact and law are associated with the SDRWQCB action to Rescind CAO 99-211. The fact remains that immediate compliance with CAO 99-211 is technologically and economically feasible as demonstrated by earlier diversions to the Moulton Niguel Water District's sewer treatment facility and, later, short term operation of mobilized urban runoff filtration units. The narrative below cites a number of laws pertaining to enforcement of Cleanup and Abatement Orders (California Water Code Section 13304); the SWRCB Water Quality Enforcement Policy (February 19, 2002; pages 3,4,11,26, 39,42); regulations and policies governing Environmental Justice (Government Code Section 65040.12 and Public Resources Code Section 72000). A declaration of a person having knowledge of the alleged facts pertaining to Requesting Stays for Water Quality Petitions is included at the conclusion of this petition.

VII. A Statement of Points and Authorities for Legal Action Raised in the Petition:

The County and City concede their failure to Cleanup and Abate elevated levels of fecal coliform at JO3PO2 in the April 21, 2005 Request to Rescind CAO 99-211 (Exhibit B).

The SDRWQCB does not comply with California Water Code Section 13304. Indeed, during the five years CAO 99-211 was in effect, the Regional Board failed to effectively intervene.

California Water Code Section 213300-13308, Chapter 5, Enforcement of a Cleanup and Abatement Order states the following:

Section 13304(a) "Upon failure of any person to comply with a cleanup and abatement order, the attorney general, at the request of the board, shall petition the superior court of the county for an issuance of an injunction requiring the person to comply with the order".

The SDRWQCB Order to Rescind CAO 99-211 also violates Section 13304 (1)(b);(2)(a), (c), (e) to expend available money themselves to perform cleanup, abatement or remedial work; to intervene to perform the work itself; recover costs for cleanup and abatement work; and protect or prevent threatened probability of harm to persons, property or natural resources.

It should again be noted, temporary compliance was achieved in 2003 utilizing mobilized water filtration units recognized among Best Management Practices (BMP). During its brief period of operation, the above BMP treated over 14 million gallons at JO3PO2 to reduce fecal coliform from 10,000 cfu's to less than 1. The SDRWQCB, City and County dischargers arbitrarily elected to terminate this effective technology to experiment with low cost constructed wetlands, which ultimately failed to reach compliance levels for fecal coliform at the JO3PO2 outlet.

The SWRCB Water Quality Enforcement Policy (February 19, 2002; pages 3,4,11,26, 39,42) specifically directs the Regional Board to take action against the following:

- Any knowing, willful, or intentional violation of the (Porter Cologne Act)
- Any violation of (the Porter Cologne Act) that enables the violator to benefit economically from noncompliance, either by realizing reduced costs or by gaining a competitive edge advantage.

- Any violation that is a chronic violation or that is committed by a recalcitrant violator.
- Any violation that cannot be corrected in 30 days.

The SDRWQCB has taken no action pursuant to the above policies while proceeding to accommodate the City/County at the expense of and detriment to the members of the SLCA.

The SDRWQCB is in violation of the Porter Cologne Act by granting an Order to Rescind Cleanup and Abatement Order 99-211 while JOPO2 continues to exceed regular fecal coliform levels.

Section 13350(m) of the Porter-Cologne Clean Water Act defines nuisance as anything which meets all of the following requirements:

1. Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life and property.
2. Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.
3. Occurs during, or as a result of, the treatment or disposal of wastes.

Members of the South Laguna Civic Association are at particular risk of injurious health from frequent exposure to pollution in Aliso Creek and recreational coastal water activities. Such threats and illnesses create an obstruction to the free use of public property at local County parks and beaches to thereby interfere with the comfortable enjoyment of life and property.

The extent of annoyance and damage is unequal with increasing harm to individuals such as swimmers, surfers, SCUBA divers, etc. with more frequent contact to polluted creek and ocean waters.

The casual relationship occurring with the discharge of contaminated urban runoff wastewater with elevated fecal coliform levels is well established in scientific and medical literature as to impose a viable threat to the community of South Laguna.

Government Code Section 65040.12 and Public Resources Code Section 72000 states:

“...the fair treatment of people of all races, cultures and income with respect to the

development, adoption, implementation and enforcement of environmental laws, regulations and policies”

The Order to Rescind Action is discriminatory and violates the State of California’s definition of Environmental Justice.

As previously noted, the community of South Laguna and visitors to the Aliso Creek Watershed and Aliso Creek County Beach have entreated the SDRWQCB for decades for relief from polluted urban runoff flows resulting from the non-regulation or enforcement of the County/City’s chronic discharge of polluted urban runoff. Local low income and working class residents have suffered damages to health, safety and liberty in their access to Aliso Creek and the Pacific Ocean. Despite the obvious tangible and verifiable nature of these damages, South Laguna and the general public have yet to receive any effective regulatory assistance either from the State or Regional Water Boards.

This failure to provide relief is not due to any lack of knowledge or information. The SDRWQCB has repeatedly and extensively investigated the mechanism by which storm drains physically convey fecal coliform bacteria downstream into the Aliso/Woods Canyon Regional Wilderness Park, South Laguna and the Aliso Creek County Beach, leaving no doubt that the City/County discharges are the cause.

Despite this clear and present causal relationship, the SDRWQCB and Staff have denied pleas from the public for remedial action in the form of abatement of non-seasonal storm drain urban runoff, beneficial reuse for sustainable treatment projects, water conservation and immediate temporary mobilized emergency capture/treatment options common among petrochemical, agribusiness and development economic sectors. In addition, the SDRWQCB has not supplied a contingency emergency plan.

Instead, the Regional Board has relied on promulgating more general directives and future contamination tables, which may or may not be effective in abating polluted urban runoff. The Order to Rescind is to accommodate the City/County at the expense of the community.

The SDRWQCB action when combined with the Staff and City/County history of ineffective action towards the residents and visitors of South Laguna, have the net effect of giving second class status to the physical health and safety needs of the public in the Aliso Watershed. Thus the Regional Boards action to rescind CAO 99-211 is discriminatory and violates the State of California’s definition of Environmental Justice.

VIII. Copies of the Petition Have Been Sent to the Appropriate Parties:

John Robertus, Executive Officer
San Diego Regional Water Quality Control Board
9174 Skypark Court, Suite 100
San Diego, CA 92123.

Bryan Speegle, Director
Resources and Development
Management Department
County of Orange
300 N. Flower Street
Santa Ana, CA 92703

Tim Casey, City Manager
City of Laguna Niguel
27801 La Paz Road
Laguna Niguel , CA 92677

IX. Substantive Objections Were Previously Raised Before the Regional Board:

Issues raised in this Petition were presented in written statements and during oral testimony before and during the Regional Board hearing (Exhibits E & F).

X. Conclusion:

The general regulations, requirements and studies pertaining to the Aliso Creek Watershed cannot be and are not an effective substitute for existing Order CAO 99-211. Rather the continuation of the effectiveness of the existing Cleanup and Abatement Order 99-211 will enhance and complement any new directives pertaining to urban runoff water pollution controls in the subject watershed.

More than five years and \$1 million dedicated to achieve compliance in a one square mile residential development is an enormous investment of taxpayer revenues for one offending storm drain. The failure to achieve compliance represents a lost opportunity to demonstrate effective interventions to protect communities like South Laguna from polluted urban runoff and sends a message to the public that urban runoff pollution cannot be controlled.

While the City and County are to be commended for investing over \$1 million in previous cleanup and abatement activities at the JO3PO2 outlet from 1999 to the present, the fact remains numerous State laws are being violated by the SDRWCB for issuing Order No. R9-2005-132 while discharge flows with elevated fecal coliform levels continue daily to pollute the protected receiving waters of Aliso Creek and the Pacific Ocean.

The South Laguna Civic Association Appreciates the efforts by the State Water Resources Control Board in reaching a favorable decision to Rescind Order No. R9-

2005-132 and Action to Reinstate CAO 99-211 until such time that full compliance is achieved.

Respectfully submitted,

Bill Rihn, President

South Laguna Civic Association
PO Box 9668
South Laguna, California, 92651

Contact Info: (949) 499-6367 conxtns@hotmail.com

I hereby declare under penalty of perjury that the foregoing Petition for Review and Request for Stay is true and correct to the best of my knowledge.

DATED: June 10, 2005, in Laguna Beach, California

Respectfully submitted,

Michael Beanan
South Laguna Civic Association

Exhibits

- A) REQUEST TO RESCIND CLEANUP AND ABATEMENT ORDER NO. 99-211 (JO3PO2 STORM DRAIN IN THE CITY OF LAGUNA NIGUEL) as Submitted by Bryan Speegle, County of Orange and Tim Casey, City of Laguna Niguel to SDRWQCB Jan. 26, 2005
- B) Order No. R9-2005-132 (Laguna Beach, May 11, 2005)
- C) “Appendix C – CAO 99-211 JO3PO2, Quarterly Progress Report” as submitted by City of Laguna Niguel, County of Orange and Orange County Flood Control District January 31,2005.
(www.ocwatersheds.com/watersheds/aliso_reports_studies_quarter1_report.asp)
- D) Mailing list to SDRWQCB, County of Orange, Orange County Flood Control District, City of Laguna Niguel and interested parties
- E) Statement of Issues as Submitted by Correspondence April 21, 2005 prior to Regional Board Action of May 11, 2005.
- F) Transcript of SLCA Testimony Re: Rescind of CAO 99-211 at Board Hearing of May 11, 2005