

June 5, 2007

State Water Resources Control Board
Office of Chief Counsel
Attn: Dolores White, Staff Services Analyst
P.O. Box 100
Sacramento, CA 95812-0100

Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

**RE: Cease and Desist Order Against Individual Property Owners
William R. Moylan and Beverley A. De Witt-Moylan,
Residents in the Prohibition Zone of Los Osos**

This is an **amended petition** for review by the State Water Resources Control Board under the Water Code section 13320(a) of an action by the Central Coast Regional Water Quality Control Board (hereinafter RWQCB).

1. PETITIONERS:

Names: William R. Moylan and Beverley A. De Witt-Moylan
Address: 1516 17th St.
Los Osos, California 93402

Telephone: 805-528-2324

E-mail address: bnbmoylan@sbcglobal.net



2. SPECIFIC ACTION OF THE CENTRAL COAST RWQCB FOR REVIEW:

Cease and Desist Order No. R3-2006-1041 for 1516 17th St., Los Osos-Baywood Park, CA.

A hard copy of the CDO is attached.

3. DATE ON WHICH THE CENTRAL COAST REGIONAL BOARD ACTED:

May 10, 2007

4. STATEMENT OF THE REASONS THIS ACTION WAS INAPPROPRIATE AND IMPROPER:

- a.) The RWQCB's determination on May 10, 2007, to adopt and issue Cease and Desist Order R3-2006-1041 was inappropriate. The Chairman of the Board, Jeffrey Young, along with the sitting members of the Regional Board, specifically requested on May 10, 2007, that the Prosecution Staff reconsider issuing any further Cease and Desist Orders until the County of San Luis Obispo be given sufficient time to complete their study of choosing a wastewater project and having the County offer a full presentation at the RWQCB's September 2007 meeting.

The Prosecution Staff has opted not to pursue any further actions on any of the other 4400 homes in the Los Osos Prohibition Zone in response to the Regional Water Board's request on May 10, 2007 (see RWQCB's "Status" document of June 1, 2007-attached). Our CDO action, which occurred on the same date of May 10, 2007, in effect singles us out and treats us differently from the rest of the community. This singling out of us and of one other couple on May 10, 2007, is improper, arbitrary and capricious.

- b.) The Regional Board's action on May 10, 2007, was improper because it was based on our restricted evidence presentation on January 22, 2007. Beverley and I requested fifteen minutes each to present our evidence at our hearing on January 22, 2007, before a sub-panel. Because our request was denied, our testimony was extremely limited (to just 15 minutes). This limited time encroached on our due process rights to be completely heard. Based solely on our limited testimony on January 22, 2007, the full panel voted to issue us a Cease and Desist Order. We believe that a CDO may not have been issued if our full testimony had been heard.
- c.) All oral testimony by other CDO recipients was heard by the full Board. Our testimony was heard only by a sub-panel of the Board on January 22, 2007. On May 10, 2007, the full board met, at which time the Prosecution Staff recommended to the Board that they issue a CDO to us and also the Wilkersons. Mr. Jeffries, a board member, joked about reading our transcript during the T.V. show "Deal or No Deal." Mr. Hodgkin, a new Board member, expressed his confusion with the entire process. Chairman Young responded that "even the lawyers are confused." For these reasons, especially, the issuance of a CDO to us was inappropriate and improper and it should be rescinded.
- d.) The time for issuing a Cease and Desist Order was shortly after the Prohibition Zone became effective on November 1, 1988. Not eighteen years later. To issue a Cease and Desist Order eighteen years after the Prohibition Zone became effective is inappropriate and improper. The County of San Luis Obispo was the responsible party for building a sewer infrastructure from 1983 until 1998. The RWQCB should have issued an enforcement order to the County of San Luis Obispo almost two decades ago. We waited patiently for the County of SLO to build a sewer for fifteen years and we waited for the Los Osos Community Services District to build a sewer for another seven years. To issue a CDO to us randomly selected individual homeowners now, seventeen years after the Prohibition Zone took effect, is simply the RWQCB's attempt to occlude their failure to act for the past seventeen years. See Water Quality Enforcement Policy, section 1C.

5. THE MANNER IN WHICH WE, THE PETITIONERS, ARE AGGRIEVED.

- a.) Although my wife and I have been aggrieved from the issuance of this CDO, we cannot limit our grievances to only the issuance of this CDO. This CDO has actually been a 17 month long culmination of harassment by the RWQCB. Because the enforcement action cannot be separated from the 17 months preceding it, the entire 17 month long process needs addressing. The RWQCB's actions have resulted in the improper and inappropriate issuance of a CDO against us, the Petitioners William R. Moylan and Beverley A. De Witt-Moylan.

- b.) The CDO issued to us on May 10, 2007, followed a scenario in which Roger Briggs, the architect of the enforcement was unavailable for a complete deposition or any testimony after October 6, 2006. This was inappropriate, consequently leading to our inappropriate CDO.
- c.) Beverley and I have also spent an enormous amount of time and money in preparation for the RWQCB's hearings throughout the year 2006 (April, May, December) and the January and May 2007 hearings. The notifications, hearings, meetings, personal meetings, phone calls, time taken from work to attend the various meetings and to help those less fortunate and older than we, who also received CDO's, have taken a tremendous toll on our personal lives and health. We also spent many hours requesting and documenting the need for a continuance of the December 14 and 15, 2006, hearing which was summarily denied. This loss of time, money and effort can never be regained. The disregard by the various members of the Prosecution Staff of our repeated requests to choose a more equitable, more humane method of achieving their goals has impacted us in numerous detrimental ways. The disrespectful attitude towards us and other residents of Los Osos by various Water Board directors at the hearings has also caused us much anguish, frustration, humiliation, and distress.
- d.) We have been wronged by the lack of due process and violation of the 5th, 6th, 8th, and 14th Amendments of the U.S. Constitution by the Central Coast Regional Water Quality Control Board. We, William and Beverley, also believe that the RWQCB by threatening to fine us up to \$5000 a day, have suffered a grueling and cruel form of harassment over the past 17 months. Bearing the weight of possibly having to leave our home if no sewer is built by January of 2011 is an exceptional burden to bear. Also, the Regional Water Board, by stating on page 4, number 2 and 3, of our CDO, that if no sewer is built or in progress by January 1, 2011, and by linking a Proposition 218 assessment vote with the implementation of this CDO enforcement action are, in fact, attempting to coerce a yes vote for the upcoming assessment (in effect, electioneering).
- e.) We, Beverley and William, have been singled out with just 44 other homeowners in Los Osos out of a total of 4400 homeowners. This is selective enforcement and unequal treatment under the law.
- f.) In May of 2006, after the first hearing on April 28, 2006, for the issuance of CDO's to the people of Los Osos, Beverley and I decided to have our septic pumped voluntarily and to submit our receipt voluntarily to Mr. Matt Thompson of the Prosecution Staff. When I gave Mr. Thompson the receipt and told him that we pumped our tank to show our compliance with the RWQCB, he said to me, "Great. You have fulfilled your CDO requirement." Now, the conditions of our CDO ~~indicate~~ requires extra paperwork. This is an extra cost as well. Our septic pumping service told us that we would have to uncover our septic tank again-an additional expense. This is unfair and unequal treatment.
- g.) Finally, Beverley has an autoimmune disease, which was in complete remission prior to our first notice from the RWQCB in January of 2006. Within three weeks after receiving that threatening notice, and due to the stress of possibly having to move out of our home due to exorbitant fines if no sewer is forthcoming, her auto-immune

disease returned with fervor. She has since had to have special infusions every eight weeks since February of 2006 due to the stress of being pursued by the RWQCB. Recently, her symptoms have worsened due to the unrelenting stress and her intervals between infusions have increased to every six weeks, at a cost of over \$7000.00 each. There is no remedy or compensation that the RWQCB or the SWRCB can offer that would give her back her health. Her health issue was mentioned to the RWQCB Prosecution Staff more than once over the past year and a half. We asked for a more humane approach to the perceived water quality problem in Los Osos but were ignored several times by the Prosecution Staff. You can verify this with Matt Thompson and Harvey Packard and with the transcripts of the hearings. The human cost in Los Osos due to the RWQCB's relentless pursuit of Los Osos's citizens has been enormous.

6. SPECIFIC ACTION REQUESTED:

Dismiss enforcement action and vacate our CDO. Enjoin the RWQCB from pursuing any further action against us, William and Beverley.

Because the rest of the 4400 homeowners in the Prohibition Zone of Los Osos are currently having no action taken against them and will not have any action taken against them until the County of San Luis Obispo proceeds with a 218 vote, to keep a Cease and Desist Order in effect on us is a flagrant disregard for your own Water Quality Enforcement Policy for fair, firm and consistent regulation and enforcement (see Section 1 of the Water Quality Enforcement Policy).

We also request that if the RWQCB continues its enforcement actions against homeowners in Los Osos at a later date, that all the testimony, documents, and evidence produced by others in Los Osos be incorporated by reference and submitted into the record on our behalf.

We further request that because the losses of time, effort, money, health and quality of life that have arisen out of this enforcement against us can never be regained, that we be fairly compensated by the RWQCB and by the State Water Resources Control Board for their untimely, ill-conceived, immoral and, we believe, illegal enforcement proceeding against us. We believe that a fair compensation for the damages to our health and well-being should be \$ 25,000,000.00 (twenty-five million dollars).

7. STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF ISSUES RAISED IN THIS PETITION:

- 1.) The enforcement actions and subsequently issued CDO were conducted in violation of Petitioners' due process and equal protection rights. Specifically, the issuance of CDO R3-2006-1041 is in violation of the 5th, 6th, 8th, and 14th Amendments of the U.S. Constitution of the United States of America.
- 2.) The process and issuance of the CDO, in a "randomly selected" drawing with 44 other "randomly" selected homeowners was discretionary, arbitrary and capricious.

- 3.) CDO number 1041 was issued without any site-specific evidence as admitted by Mr. Matt Thompson at our January 22, 2007 hearing.
- 4.) While only 45 homeowners have been prosecuted with a CDO for nearly 17 months or have signed a subtly coercive "settlement agreement," 4400 other homeowners in the Prohibition Zone have lived their lives virtually untrammled by this action. This is decidedly unequal treatment under the law.
- 5.) The administration of this CDO has not been compliant with Water Code section 13291.5.
- 6.) This CDO was issued on speculative, arbitrary and very limited circumstantial evidence. The test well nearest our home is located on what was an active horse stable and pasture until late 2005. It is quite possible that this well has had horse urine contaminate it regularly.
- 7.) Throughout the 17 month long process of this enforcement, the RWQCB has shown a bias in favor of the prosecution staff by sustaining each and every objection by Staff's counsel and by overruling each and every defendant's objection.
- 8.) The RWQCB has resolutely and consistently ignored consideration of more reasonable options in lieu of issuing a CDO to us, the Petitioners.
- 9.) The RWQCB has failed to produce any solid evidence to support its claims that the nitrate levels in Los Osos's upper aquifer are directly related to septic tank effluent. Nitrate contamination is the original reason for enforcement proceedings, and yet Morro Bay, our neighbor just four miles north of Los Osos, has much higher concentrations of nitrates in its test wells, and Morro Bay has been sewered for 50 years.
- 10.) The validity of the Prohibition Zone has not been allowed to be questioned during this enforcement proceeding. Yet, recent and past evidence shows that nitrates in the aquifer fluctuate throughout the year and with the rainy season.
- 11.) We, as petitioners, have not been allowed to challenge enforcement actions by challenging the validity of the Prohibition Zone. However, Water Code 13330, in effect at the time of 83-12, disallowed challenges to the Prohibition Zone until an enforcement action was initiated. Although the Water Code changed shortly after the creation of the "Zone," to no longer allow challenges of said "Zone," the law in effect at the time did allow challenges only after an enforcement action. That law should still apply now due to the rules in effect at the time. Our home was built in 1976, years before the creation of the Prohibition Zone. Our home still has a septic system permitted by the County of San Luis Obispo.
- 12.) Because the RWQCB failed to meet each and every one of its own timelines regarding submission of evidence by the Prosecution Staff, and because of the Prosecution

Staff's last minute revising of its own timelines to suit its constant tardiness of posting needed documents for the designated parties, we, the Petitioners, were at a distinct disadvantage in perusing documents for our defense. This is a primary example of lack of due process.

- 13.) The RWQCB did not allow sufficient time for us, William and Beverley, to present our testimony, even after repeated requests. Another example of lack of due process.
- 14.) The RWQCB's enforcement actions are punitive and certainly not applied equally to all residents of the Prohibition Zone. In fact, only 38 property owners have been issued CDO's or signed a settlement agreement. All of the other 4400 homeowners have been given simple notice of violations. Seven property owners who originally received proposed CDO's have not yet had any action taken against them. This exemplifies unequal treatment under the law.
- 15.) During the Los Osos hearings on April 28, 2006, and December 14 and 15, 2006, expert testimony by wastewater experts explained that the nitrate levels of the Los Osos upper aquifer were not necessarily from the septic tanks in Los Osos. They also said that the Los Osos sand column in the vadose zone below the septic tanks was the best filtering sand in the entire country. These experts also said that linking effluent from a home more than one hundred feet from a test well was not scientifically valid and stretching the boundaries of reason. These same experts said that stopping the flow of effluent from septic tanks would not lower the nitrate levels in the aquifer. The Prosecution Staff disregarded all of their testimony. This was a blatant disregard of scientific data. The Prosecution Staff also admitted that there is not one wastewater expert on their staff.
- 16.) The RWQCB Prosecution Staff consistently used gender bias by not listing my wife Beverley on all correspondence from them for several months. This was after repeatedly asking them to address any correspondence to us by using both of our names. In fact, at the December 14 & 15, 2006, hearings, which Beverley and I could not attend, Mr. Young referred to us as "Mr. and Mrs. Moylan," and then having realized his mistake of my wife's last name, Mr. Young said, "I mean Ms. De Witt-Moylan. Shame on me." He said "Shame on me" with a smirk on his face and looked at the other members of the Board for approval of his disparaging remark. The tapes of this hearing are available and you may see for yourself.
- 17.) Mr. Briggs appeared voluntarily at a limited deposition but no documents that were requested were brought with him. Also, no notification of this "voluntary deposition" was sent out to the designated parties, so attendance was very limited with only four designated parties attendant. Mr. Rob Shipe, one of the designated parties, notified the four designated parties who attended this deposition. The Prosecution Staff gave no notice of the "voluntary deposition" to the designated parties. The non-notification and the lack of requested documents at this "deposition" demonstrates a lack of due process by the RWQCB.

- 18.) The CDO requires the owner of the property to notify the RWQCB of any new tenant or owner within 30 days after the new tenant or owner takes occupancy. This is a direct violation of the 5th Amendment of the U.S. Constitution and is a violation of the right to privacy.
- 19.) We were issued a CDO because we were unwilling to be coerced into signing Mr. Reed Sato's settlement agreement that is by RWQCB admission a CAO.
- 20.) Because wastewater expert testimony at the enforcement proceedings specifically stated that pumping septics or even stopping the use of septics would result in no benefit to the aquifer, issuing us a CDO was unnecessary and punitive.
- 21.) The RWQCB has not met its obligation to assist homeowners who have received CDO's as stated in Water Code section 13301.1.
- 22.) Assembly Bill 2701, which puts the authority and power to remedy the Prohibition Zone decree in the hands of the County of San Luis Obispo, renders the issuance of our CDO harmful and purely punitive, not helpful.
- 23.) When I personally told Matt Thompson, with Harvey Packard present, at a personal meeting, that my wife and I wanted to put in an on-site system to meet the requirements of the RWQCB, he emphatically replied, "You don't want to go that way, Bill." It was obvious that the RWQCB's position is for a community wide system. Mr. Thompson did not offer me any assistance.
- 24.) In issuing us a CDO the RWQCB holds us, William and Beverley, personally accountable for the building of a sewer, which is completely out of our control.
- 25.) Because of the passage of 19 years since the Prohibition Zone has been in effect, because the County of San Luis Obispo had the requirement of building a sewer for over 15 years and failed to act, because the RWQCB failed to compel the County to complete, or even start the sewer project for over twenty years, the concept of estoppels by laches must apply to the issuance of our CDO.
- 26.) Although the timeline of when the CDO must take effect is not until January 1, 2011, the encumbrance on our property is such that selling our home or qualifying for a home improvement loan is next to impossible, which, in effect, equates to the taking of our property without due process and is in violation of the 14th Amendment of the United States.
- 27.) Resolution 83-12 required the County to establish a septic management program for Los Osos in a Memorandum Of Understanding. This MOU prohibited any "new" discharges. Since our home was built in 1976, our septic discharges have always been legal and in compliance with 83-12.

- 28.) In defiance of the MOU the County permitted and the RWQCB allowed the construction of 1100 new homes between the years 1983 and 1988 in the Prohibition Zone. Now, all of these homes have also received a "Notice of Violation." This is in direct opposition to the MOU language of not permitting any "new" discharges. Our home has never given off any "new" discharges and our discharges are well under 250 gallons of effluent daily. Therefore, issuing us a CDO is contrary to the agreements in the RWQCB Memorandum Of Understanding.
- 29.) In October 2005, after the initial work on a sewer plan for the Prohibition Zone had been stopped, Assemblyman Blakeslee met with members of the Los Osos Community Services District and a representative of the SWRCB for the RWQCB. A compromise to continue the work and build the sewer plant outside of town was worked out and agreed to. Within days the RWQCB broke the agreement and decided to send out CDO's. This broken agreement by the RWQCB should negate the issuance of our CDO.
- 30.) The credibility of test results from faulty capped wells or wells that are subsurface with the surface run-off from horse pastures is in question and dubious, which directly leads to the validity of the Prohibition Zone itself, and ultimately to our wrongly issued CDO.
- 31.) At the request of Chairman Young, we timely submitted a twenty-page detailed document requesting a continuance of the December 14 and 15, 2006, hearing. We did this after making several e-mail requests for a continuance, explaining that we had long standing plans for Beverley to attend an educational conference for her teaching profession. We explained that I needed to accompany her on the long drive due to her condition. Despite providing all the necessary document copies of receipts, some non-refundable, we were denied a continuance without any reasoning or explanation. We repeatedly asked for the definition of "substantial justification" and were never given an answer to our request. This is another example of lack of due process and infringement on the right to be heard.
- 32.) We, the Petitioners, were never informed at the time of our home purchase that our home was in a "Prohibition Zone." Although this could be construed as an oversight or a deliberate omission by the realtor, we believe that it is probably an oversight by the RWQCB of not informing realtors of the Prohibition Zone.
- 33.) The RWQCB has failed to inform the Petitioners or any other CDO recipients of how they could comply with the enforcement requirements other than a statement by Matt Thompson at the hearing of April 28, 2006, that we would "have to vacate the premises." Since that time, no one on the Prosecution Team has explained any other remedy to us, nor have they retracted Mr. Thompson's statement. This statement by Mr. Thompson is diametrically opposed to "fair, firm, and consistent" enforcement in the Water Quality Enforcement Policy, section 1.
- 34.) The RWQCB has also failed to consider the economic impact to us and/or any other Prohibition Zone resident, many of whom fall into the lower economic stratum. This

goes against the environmental justice section of your Water Quality Enforcement Policy, section 1F.

35.) The "Status of Enforcement of Septic Tank Discharge Prohibition" notice, dated June 1, 2007, was sent to all of the other 4400 homeowners in the Los Osos Prohibition Zone. It specifically states that "The Water Board did not take any formal action at the May 10th meeting and made it clear that the Prosecution Team must decide whether and when to pursue additional enforcement actions." If it is true that no formal action took place on May 10, 2007, then that would negate the issuance of CDO R3-2006-1041.

We, William R. Moylan and Beverley A. De Witt-Moylan reserve the right to provide additional arguments and evidence to support this Petition from any hearings, meetings, phone conversations or e-mails with the RWQCB prior to and including May 10, 2007, or any written evidence previously submitted. We request the right to amend this Petition and to include any additional arguments and evidence with the RWQCB prior to and including the meeting on May 10, 2007, that we believe to be necessary.

8.) STATEMENT OF PETITION BEING SENT TO THE APPROPRIATE REGIONAL BOARD:

We, William R. Moylan and Beverley A. De Witt-Moylan, have sent a copy of this petition to the Regional Water Quality Control Board, Central Coast Region.

We, William and Beverley, the Petitioners, are the dischargers.

9.) STATEMENT OF SUBSTANTIVE ISSUES AND/OR OBJECTIONS RAISED BEFORE THE REGIONAL BOARD, CENTRAL COAST REGION:

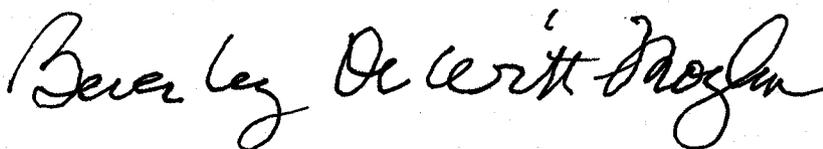
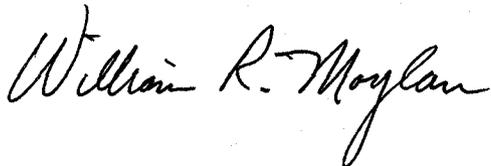
Petitioners, William R. Moylan and Beverley A. De Witt-Moylan, affirm that all the issues raised in this petition were raised before the RWQCB before the RWQCB acted, except for the mention of the "Status...." notice sent to homeowners in Los Osos on June 1, 2007, which occurred after the May 10, 2007, meeting. The subject of financial compensation for personal injury was brought up before at a personal meeting in the fall of 2006 with Mr. Harvey Packard, Mr. Matt Thompson, Mr. Robert Lane, my counsel, and me, William R. Moylan. No specific amount was mentioned at that meeting.

All communications referred to in this petition have occurred over the past 17 months with the RWQCB in phone conversations, meetings arranged and spontaneous, and e-mails from January 2006 until May 10, 2007. We confirmed our CDO with an e-mail from Michael Thomas on May 15, 2007, and May 18, 2007.

Sincerely,

William R. Moylan

Beverley A. De Witt-Moylan





California Regional Water Quality Control Board

Central Coast Region



Linda S. Adams
Secretary for
Environmental
Protection

Internet Address: <http://www.swrcb.ca.gov/rwqcb3>
895 Aerovista Place, Suite 101, San Luis Obispo, California 93401
Phone (805) 549-3147 • FAX (805) 543-0397

Arnold Schwarzenegger
Governor

May 24, 2007

CERTIFIED MAIL 7006 0100 0000 1777 6082

Bill Moylan and Beverley De Witt-Moylan
1516 17th Street
Los Osos, CA 93402-1825

Dear Mr. Moylan and Mrs. De Witt-Moylan:

CEASE AND DESIST ORDER NO. R3-2006-1041 FOR 1516 17TH STREET, LOS OSOS-BAYWOOD PARK

The Central Coast Water Board adopted your Cease and Desist Order No. R3-2006-1041 (CDO) on May 10, 2007. Please find your adopted CDO attached.

In summary, the CDO requires you to cease your septic system discharge within 60 days of the availability of a community wastewater system connection. However, if the County of San Luis Obispo's benefit assessment is not approved by July 1, 2008, then you must cease your septic system discharge by January 1, 2011. If the benefits assessment is approved but then there is material cessation of progress on the community wastewater system, you must cease your septic system discharge by January 1, 2011, or within two years of receiving notice of material cessation from us, whichever is later. Also, by August 10, 2007, you are required to have your septic system pumped out and inspected by a qualified contractor, submit a report of such inspection, and then make any necessary repairs to your septic system.

If you have any questions, please contact Matt Thompson at mthompson@waterboards.ca.gov or (805) 549-3159.

Sincerely,

Michael J. Thomas
Assistant Executive Officer

Enclosure: Adopted Cease and Desist Order No. R3-2006-1041

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California Environmental Protection Agency



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**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401**

CEASE AND DESIST ORDER NO. R3-2006-1041

Requiring

**BILL MOYLAN & BEVERLEY DE WITT-MOYLAN
OWNER AND OCCUPANT
1516 17TH STREET, LOS OSOS
APN 038-412-028
SAN LUIS OBISPO COUNTY
TO CEASE AND DESIST FROM DISCHARGING WASTES
IN VIOLATION OF A BASIN PLAN PROHIBITION
PRESCRIBED BY THE CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD, CENTRAL COAST REGION**

The California Regional Water Quality Control Board, Central Coast Region (hereafter Water Board), finds:

1. Bill Moylan and Beverley De Witt-Moylan own and operate an on-site wastewater treatment and disposal system (Septic System) at 1516 17th Street (Site) in Los Osos, California. The Site is a residence located within the prohibition zone established by Resolution no. 83-13. The Septic System consists of a septic tank that discharges wastewater to an on-site subsurface disposal facility. Bill Moylan and Beverley De Witt-Moylan are referred to in this Order as "Discharger."
2. The Site has no wastewater disposal facility other than the Septic System. Waste generated at the Site includes human waste and wastewater from toilets and from domestic activities such as bathing, laundry, dishwashing and disposal of garbage. This waste is discharged to the Septic System. Liquid waste then discharges from the Septic System and eventually to groundwater.
3. The discharge of waste or the threatened discharge of waste from the Septic System violates a prohibition of waste discharge from individual sewage disposal systems set forth in the Water Quality Control Plan, Central Coast Basin (Basin Plan). The Water Board adopted the prohibition on September 16, 1983. The Basin Plan prohibition specifies, in part (page IV-67):

"3. Discharges from individual and community sewage disposal systems are prohibited effective November 1, 1988, in Los Osos/Baywood Park area depicted in the prohibition boundary map included as Attachment "A" of Resolution 83-13".

The prohibition boundary map is contained in Appendix A-30 of the Basin Plan. The Site is within the prohibition area.

4. On January 27, 2006 and February 28, 2006, notice was provided to the Discharger and other affected persons regarding the Water Board's consideration of this Order.
5. Pursuant to AB 2701, as of January 1, 2007, the County of San Luis Obispo (County) is authorized to undertake any efforts necessary to construct and operate a community wastewater collection and treatment system to serve the territory which is subject to the wastewater discharge prohibition imposed by the Central Coast Regional Water Quality Control Board (Water Board) pursuant to Resolution No. 83-13. That territory includes the Site. If the Site is connected to a community wastewater collection and treatment system as contemplated by AB 2701 the Site will comply with the applicable waste discharge prohibition in the Basin Plan
6. On January 22, 2006, in San Luis Obispo, California, a panel of the Water Board held a public hearing and heard evidence regarding this Order.
7. This Order includes monitoring and reporting requirements pursuant to Water Code Section 13267. The Water Board needs the required information in order to assess compliance with the Basin Plan and this Order, and to ensure that pollutant loading within the prohibition area is minimized to the extent possible. The Discharger is required to provide this information because the Discharger is the owner and/or operator of the Septic System. The staff report that accompanied the draft order includes additional evidence in support of this requirement. The Water Board adopted the prohibition in 1983, it became effective 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.
8. The technical report required by Section A.2.b or 3 (as applicable) is necessary to determine that any alternative to connecting to a community wastewater collection and treatment system meets applicable legal requirements, including the septic system discharge prohibition, and to assess compliance with Paragraph A.1 of this Order.
9. Alternatives proposed to comply with this Order may be subject to permitting requirements, including the requirement to obtain waste discharge requirements. Nothing in this Order relieves the Discharger of the obligation to obtain any necessary permit or waste discharge requirements.
10. This enforcement action is being taken for the protection of natural resources and the environment and as such is exempt from the provisions of the California Environmental Quality Act (Sections 15307, 15308, and 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).

11. Because this cease and desist order applies to a residence, the Water Board finds that any penalties imposed for failure to comply should not exceed \$30 per day, unless specific findings are made by the Water Board to justify an exceedance.

IT IS HEREBY ORDERED, pursuant to Sections 13260, 13267 and 13301 of the California Water Code, that the Discharger shall comply with the following requirements:

A. CESSATION OF DISCHARGE

1. In the event that the County is successful in approving a benefits assessment by July 1, 2008 to finance the construction of a community wastewater collection and treatment system after providing the owners of the subject property with notice and an opportunity to protest the assessment in accordance with Article XIII D of the California Constitution, and, thereafter, the County completes a timely due diligence review for the construction of a community wastewater collection and treatment system, and constructs a community wastewater collection and treatment system in accordance with a schedule approved by the Regional Board;
 - a. The Discharger shall cease all unpermitted discharges (discharges not approved or permitted by the Water Board) from the Septic System no later than 60 days after a community wastewater collection and treatment system is available for connection to the Site;
 - b. After the Water Board provides notice of the expected availability date to the Discharger and no later than 90 days before the expected availability date, the Discharger shall submit the following information, either:
 - i. A statement that the Discharger agrees to connect to the community wastewater treatment plant and sewer system within 60 days after the system becomes available for connection to the Site; or
 - ii. A technical report proposing an alternative method of ceasing all unpermitted discharges from the Septic System. The proposed alternative must be adequate to cease unpermitted discharges from the Septic System within 60 days after the date on which the approved schedule anticipates that the community wastewater collection and treatment system will be available, and must include a proposed monitoring and reporting plan. If the alternative involves a discharge of waste that could affect waters of the State, the report shall be in the form of a report of waste discharge. "Waters of the State" is defined in Water Code Section 13050(e). "Report of waste

discharge” means a report that complies with Water Code Section 13260 and, if applicable, Water Code Section 13376. In the event that the proposed alternative is not approved by the Water Board, Discharger will be required to cease all unpermitted discharges from the Septic System no later than 60 days after the availability of a community wastewater collection and treatment system is available for connection to the Site in accordance with Paragraph A.1.a.

2. In the event that the benefits assessment is not approved by the County before July 1, 2008, the Discharger shall cease all discharges from the Septic System no later than January 1, 2011 unless the Water Board has approved an onsite system for discharge from the Site by June 30, 2010, the Discharger shall submit a technical report proposing a method of complying with the January 1, 2011 discharge prohibition date. The proposed alternative must be adequate to cease unpermitted discharges from the Septic System by January 1, 2011, and must include a proposed monitoring and reporting plan. If the alternative involves a discharge of waste that could affect waters of the State, the report shall be in the form of a report of waste discharge. “Waters of the State” is defined in Water Code Section 13050(e). “Report of waste discharge” means a report that complies with Water Code Section 13260 and, if applicable, Water Code Section 13376.
3. In the event that after the benefits assessment is approved by the County, there is a material cessation of the work, as determined by the Water Board, which prevents the implementation, completion, or availability of a community wastewater collection and treatment system to the Site, the Discharger shall cease all discharges from the Septic System by the later of January 1, 2011 or two years following written notice by the Executive Officer of the material cessation. Six months prior to that discharge cessation date, the Discharger shall submit a technical report proposing a method of complying with the discharge cessation date. The proposed alternative must be adequate to cease unpermitted discharges from the Septic System by the discharge cessation date and must include a proposed monitoring and reporting plan. If the alternative involves a discharge of waste that could affect waters of the State, the report shall be in the form of a report of waste discharge. “Waters of the State” is defined in Water Code Section 13050(e). “Report of waste discharge” means a report that complies with Water Code Section 13260 and, if applicable, Water Code Section 13376.
4. The Executive Officer may also extend the due date for any interim or reporting requirement of Section A for up to ninety days for circumstances beyond the Discharger’s reasonable control.
5. Nothing in this Order authorizes discharges from the Septic System at any time, whether before or after January 1, 2011.

B. INTERIM COMPLIANCE REQUIREMENTS

By three months after the date of this Order, the Discharger shall (1) have the contents of the Septic System pumped or certify that the Septic System has been pumped within the previous three years, and (2) obtain and submit to the Water Board a report by the County of San Luis Obispo or a septic tank pumper with a C42 contractor's license on the San Luis Obispo County Septic Tank Inspection Form and Septic Verification Form (a copy of which is attached as Exhibit "A") that either describes recommended repairs to the Septic System or states that no repairs are necessary. If the Discharger disagrees with any repair recommendation, the Discharger shall provide justification to the Executive Officer no later than four months after the date of this Order explaining why the repairs are not necessary. Unless Water Board staff agrees, in writing, that any recommended repair is not necessary, the Discharger shall provide documentation no later than three months after the date of this Order, that the Discharger has complied with these pumping, inspection and repair requirements. Until the community wastewater collection and treatment system is available to the Site and/or all unpermitted discharges from the Septic System cease, the Discharger shall have three months from every third anniversary of the entry of this Order to satisfy the same pumping, inspection and repair requirements. The Executive Officer may extend the due date for any requirement of Section B for up to ninety days for circumstances beyond the Discharger's reasonable control.

C. PROVISIONS

1. All reports, receipts, notifications and other documents the Discharger submits pursuant to the Order (including Paragraph A.2 of this Order) shall be accompanied by a statement from the Discharger stating: "I certify under penalty of perjury that the attached documents were prepared at my request or under my supervision, and to the best of my knowledge are true, accurate and complete. I understand that there are significant penalties for providing false or incomplete information, including the possibility of criminal fines or imprisonment."
2. If more than one person or entity is a "Discharger" subject to this Order, compliance by any of those persons or entities with the submission requirements of this Order constitutes compliance by all Dischargers. Multiple submissions are not required. However, all named Dischargers are responsible for compliance with all requirements of this Order, and will be subject to enforcement for any non-compliance. Agreements among and/or between Dischargers as to how they will comply with this Order's requirements are not binding on the Water Board and do not protect any Discharger from enforcement actions.
3. Discharger shall inform any subsequent owner or occupant at the Site of this Order and provide a copy of the Order. The Discharger is liable for the use of the Septic System, while the Discharger owns the Site, including but not limited to the use of the Septic System by any tenant or any other person occupying the Site.

4. The property owner shall notify the Executive Officer and the Staff Prosecution Team in writing of any transfer of ownership of the Site within 30 calendar days following close of escrow or transfer of record title after transfer of ownership.
5. The property owner shall notify the Executive Officer and Staff Prosecution Team in writing of the name of any new occupant of the Site within 30 days after the new occupant takes occupancy.
6. If, in the opinion of the Executive Officer, the Discharger fails to comply with any provision of this Order, then the Executive Officer may apply to the Attorney General for judicial enforcement or issue a complaint for Administrative Civil Liability.

FAILURE TO COMPLY WITH PROVISIONS OF THIS ORDER MAY SUBJECT THE DISCHARGER TO FURTHER ENFORCEMENT ACTION INCLUDING ASSESSMENT OF CIVIL LIABILITY UNDER SECTIONS 13268 OR 13350 OF THE WATER CODE AND REFERRAL TO THE ATTORNEY GENERAL FOR INJUNCTIVE RELIEF AND CIVIL OR CRIMINAL LIABILITY.

I, **Michael J. Thomas, Assistant Executive Officer**, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Coast Region, on May 10, 2007.


Assistant Executive Officer

Exhibit "A"

San Luis Obispo County Septic Tank Inspection Form and
Septic Verification Form



County of San Luis Obispo Septic Tank Inspection Report

(Please type or print)

Date of Service / Maintenance _____

Owner's Name _____ Phone No: _____

Location of Inspection _____
(Address) (City) (Zip)

Number of Bedrooms _____ Year Septic System Built: _____

Septage disposal location / date: _____

System Components:

Septic tank with leach field or drywell Septic tank with pump Cesspool Other _____

Estimated capacity of septic tank _____ gallons Number of compartments _____

Amount Pumped _____ gallons Number of access lids: _____

Depth to Access lids: _____ Diameter of Access Lids: _____

Construction of septic tank or Cesspool:

Rectangular Round Other
 Concrete Fiberglass plastic Brick other _____

Condition of Tank:

	No	Yes		No	Yes
Tank deteriorated	<input type="checkbox"/>	<input type="checkbox"/>	inlet tee present	<input type="checkbox"/>	<input type="checkbox"/>
Baffle Wall deteriorated	<input type="checkbox"/>	<input type="checkbox"/>	outlet tee present	<input type="checkbox"/>	<input type="checkbox"/>
Lids are deteriorated	<input type="checkbox"/>	<input type="checkbox"/>	house lateral open	<input type="checkbox"/>	<input type="checkbox"/>
Heavy grease build-up	<input type="checkbox"/>	<input type="checkbox"/>	needs pumping	<input type="checkbox"/>	<input type="checkbox"/>

Minimum concrete thickness at lids: _____ method of measurement: _____

Prior to pumping was effluent above outflow tee? No Yes (may indicate failing system)

While pumping did effluent re-enter tank from leach system No Yes (may indicate failing system)

Signs of surfacing effluent No Yes, location _____

Any signs of Past drainage problems? No Yes site map N

Maintenance performed: _____

System appears to be functioning satisfactorily? No Yes

Repairs / upgrade required

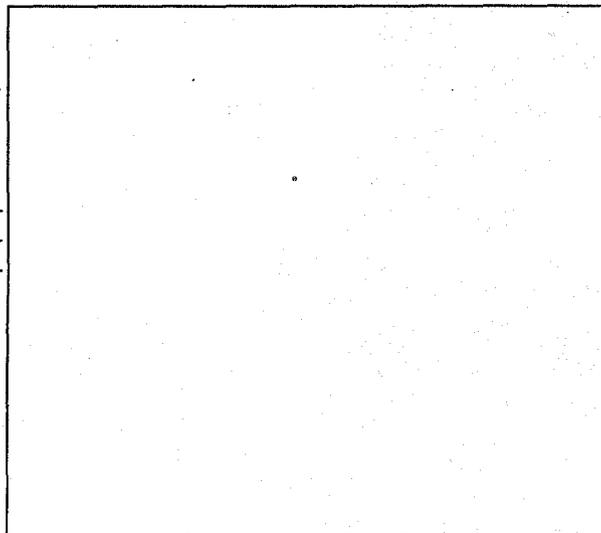
1. _____
2. _____
3. _____

Comments / Recommendations: _____

Inspectors qualifications: _____ C-42 _____ NAWT

Other qualifications: _____

Service Company Performing Pumping / Maintenance: _____



The useful life of any septic system is determined by numerous factors, including but not limited to, soil characteristics, water usage, and proper maintenance. This inspection report is based on observations by the inspector and information provided by the system owner. It is not a guarantee of system adequacy.

Signature of Qualified Inspector: _____ Date: _____ Phone: _____

When form is completed, please return pink and yellow copy to: Department of Environmental Health, C/O Megan Lillich REHS, P.O. Box 1489, San Luis Obispo, Ca. 93405.

For any questions about septic repair or maintenance, please contact Barry Tolle REHS at 781-5628, e-mail at: btolle@co.slo.ca.us, or visit our website at www.sloplanning.org



Septic Verification Form
San Luis Obispo County Department of Planning and Building
County Government Center, San Luis Obispo, California 93408 (805) 781-5600

1. Certification of Existing Subsurface Sewage Disposal System.

Date of Inspection _____

(Property Address)

(Owner's Name)

(APN number)

(Permit number)

2. Show design and location on a scale of 1"=10' to 1"=40' of the sewage disposal system and 100% expansion area in relation to attached dwellings, structures, wells, rocks, watercourses, etc. on required plot plan.

3. a. I examined the existing subsurface sewage disposal system at the above location on (Date) _____ date.

And determined that the septic tank capacity is _____ gallons. There are _____ bedrooms in the dwelling.

b. There are _____ leachline(s), each is _____ feet long.

c. There are _____ seepage pit(s), each _____ feet in diameter and each is _____ feet deep.

d. The leach bed is _____ feet, by _____ feet, total _____ square feet of leach bed area.

4. a. Construction of septic tank (please check one of the following):

_____ concrete _____ fiberglass other _____

b. The tank is in good condition. The inlet and outlet Tees are present, and the baffle is not cracked, broken or displaced

Yes _____ No _____ Comments: _____

5. a. While pumping the tank, did effluent flow back into tank from the absorption system? _____ yes _____ no

b. Prior to pumping, was the liquid level in the tank above the outlet tee? _____ yes _____ no

c. Is design of system gravity feed? _____ yes _____ no

c. Were well(s) observed on this or adjacent property? * _____ yes _____ no

* If yes, indicate distance of well from: Septic tank, _____ Ft. Leachlines, _____ Ft. Seepage Pit, _____ Ft.

e. Distance from springs, lakes and natural drainage courses: Septic Tank, _____ Ft. Leachlines, _____ Ft. Seepage Pits _____ Ft.

ADDITIONAL COMMENTS _____

6a. _____ It is my opinion that the system appears to be in good working order and can be expected to function properly with proper maintenance. No repairs are necessary at this time.

6b. _____ It is my opinion that the system is not in good working order and will not function properly without the following repairs:

I certify under penalty of perjury that the foregoing is true and correct:

Signature

C-42 State License Number

Expiration Date

Print Name

Name of Pumper Company holding C-42 License

Address

Phone Number



California Regional Water Quality Control Board

Central Coast Region



Linda S. Adams
Secretary for
Environmental
Protection

Internet Address: <http://www.waterboards.ca.gov/centralcoast>
895 Aerovista Place, Suite 101, San Luis Obispo, California 93401
Phone (805) 549-3147 • FAX (805) 543-0397

Arnold Schwarzenegger
Governor

June 1, 2007

[Assessee]
[Mailing Address]
[Mailing City], [State] [Zip]

Dear [Assessee]:

STATUS OF ENFORCEMENT OF SEPTIC SYSTEM DISCHARGE PROHIBITION, [SITE ADDRESS], LOS OSOS/BAYWOOD PARK, SAN LUIS OBISPO COUNTY

On March 21, 2007, we sent a letter notifying you that your septic system discharge violates State law. In that letter, we said that we were exploring potential enforcement alternatives and would notify you of the enforcement process in the coming months. This letter is a follow-up to our March 21st letter and explains the current status of enforcement.

At its May 10, 2007 meeting, the Central Coast Regional Water Quality Control Board (Water Board) heard the Prosecution Team's recommendations and public and agency comments regarding potential enforcement actions against individuals in the Los Osos/Baywood Park septic system prohibition zone. Most public comments centered around the community's support for the County of San Luis Obispo's progress on a community wastewater collection and treatment system that would eliminate illegal discharges and improve water quality and protect public health. Some commented that the community should have some breathing room at this time to be able to focus on supporting the County project, rather than reacting to continued enforcement actions.

In fact, the County itself, through its May 3, 2007 letter from the Board of Supervisors, requested that the Water Board hold off on enforcement action for now due to the County's commitment "to help resolve the wastewater dilemma in Los Osos." The County said its efforts under the authority of Assembly Bill 2701 provide the best opportunity for resolving the Los Osos wastewater problem. The County said it was "increasingly hopeful that the community and the property owners recognize that this final opportunity for a local agency solution will prevail and that State enforcement and/or implementation actions can be prevented."

The Water Board did not take any formal action at the May 10th meeting and made it clear that the Prosecution Team must decide whether and when to pursue additional enforcement actions. However, Water Board members discussed the County's recent

California Environmental Protection Agency



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progress toward getting a community wastewater collection and treatment system built, and some members expressed interest in holding off on immediate enforcement actions. Board members cautioned that failure of the County process would most likely lead to continued enforcement. Board members supported the Prosecution Team's plan to treat everyone in the Prohibition Zone equally with any future enforcement action, and suggested a penalty cap in any future enforcement orders. Board members asked that County representatives attend the Board's July meeting to answer their questions, and accepted the County's offer to make a full project presentation at the Board's September meeting.

After considering the County's request and its continued commitment to the AB 2701 process, the Prosecution Team has decided not to initiate further enforcement actions at this time. The Prosecution Team is hopeful that the County's efforts will bring about a practical and timely solution to the illegal septic system discharges in the Prohibition Zone.

While the Prosecution Team is deferring to the County's request at this time, please be advised that all discharges from septic systems within the Los Osos/Baywood Park Prohibition Zone have been and are still illegal, and you are exposed to accumulation of daily penalties while such discharges continue. If the County's efforts to develop a community wastewater treatment and collection system are not successful, then you face the prospect of enforcement actions, such as the cease and desist orders described in our March 21, 2007 Notice of Violation, or the cleanup and abatement orders described in our staff report for the May 10, 2007 Water Board meeting. Again, we are hopeful that the County will successfully deliver a project that will eliminate the illegal septic system discharges and avert further enforcement action.

If you are interested in the documents related to the Prohibition Zone and individual enforcement action, you may review them at the letterhead address during normal business hours, or online at: www.waterboards.ca.gov/centralcoast/. If you have questions, you may contact Matt Thompson of the Prosecution Team at (805) 549-3159, or by email at mthompson@waterboards.ca.gov.

Sincerely,



Harvey C. Packard
Prosecution Team Lead

