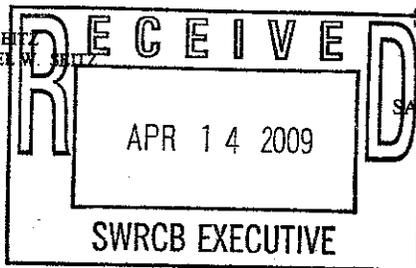


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SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT'S COMMENTS UPON SECTION 7 OF THE 2007/2008 DRAFT ANNUAL ENFORCEMENT REPORT

The South San Luis Obispo County Sanitation District ("SSLOCSD") is a District established under the Health & Safety Code and provides wastewater treatment services for the cities of Arroyo Grande, Grover Beach and the Oceano Community Services District, as well as small amounts of unincorporated county territory. The District operates a plant with a rated capacity of 5 million gallons per day. Its average flow is approximately 2.7 million gallons per day.

SSLOCSD has established a close regulatory relationship with the local Regional Quality Control Board. This has allowed the District to operate in the interest of the community and establish itself as being the primary agency relating to regulations associated with wastewater treatment within its District boundaries. As a part of this effort, the District has established and is updating a pretreatment ordinance and has instituted a District wide Fats, Oils and Grease ("FOG") Ordinance and inspections are ongoing.

Comments on Section 7 of the Draft 2007/2008 Enforcement Report

SSLOCSD generally concurs with the potential actions over the coming year to more effectively enforce Water Code regulations. Specifically, SSLOCSD encourages the goal of procedural consistency in Regional Water Board enforcement proceedings, as well as a prioritization of enforcement actions to address the most serious threats to water quality. This is carried forward in section 7.9 which focuses on Mandatory Minimum Penalty ("MMP") related violations for priority.

SSLOCSD further supports additional inspection and enforcement training for regional staff. Further, SSLOCSD encourages increased field presence for Regional Board Staff. In regards to field presence of Board Staff, as a part of the District's regulatory relationship with the local Regional Board Staff, there is frequent interaction with Board Staff in the field.

SSLOCSD has specific concerns in regards to section 7.5 dealing with opportunities for citizen enforcement of Water Code violations. This section implies that private attorney general actions will be encouraged to enforce the Water Code alleged violations of either District NPDES permit or the wastewater discharge permit. The District has concerns that this will lead to nuisance type litigation which will have the effect of chilling the self-reporting nature of the present regulatory scheme. Under

generally recognized private attorney general statutes, citizens and their attorneys that bring such complaints are often rewarded with attorney's fees at the conclusion of those cases.

While it is possible to identify cases in the past in which citizens' private attorney general actions have provided benefit to the public in terms of identifying failures of other regulatory agencies to enforce their regulations, it seems doubtful that this would result in better enforcement of the water regulations being now enforced by the Regional Board.

Consequently, SSLOCSD encourages the funding and training of Regional Board Staff for their regulatory activity in this area. The District acknowledges that a primary reason for focusing on citizen enforcement is the potential for a lack of funding for Board regulatory activities and the belief that citizen enforcement may allow for the potential reduction of regulatory training and the expense associated with training and enforcement.

Additionally, the SSLOCSD has concerns regarding the establishing of minimum penalties for Water Code violations. The scheme of enforcement for Water Code violations at the present time provides very little ability for county sanitation districts to interact with RWQCB staff. Interaction between SSLOCSD staff and RWQCB staff is necessary. Interaction between SSLOCSD staff and RWQCB staff is necessary to anticipate potential minor violations during plant disruption due to natural causes, causes extraneous to District operation or work ongoing at the District plant that would have a potential for upset. Establishing minimum penalties would further reduce the ability of local Water Board Staff to deal with local agencies.

The express effort to obtain funding through enforcement of fines related to stale violations relates to the only instance where the District has been fined. In calendar year 2000, the District was doing rework at the District plant in order to add facilities for chlorination of the District's discharge. The District did consult local Regional Board Staff to advise that this work would be ongoing and that there would likely be temporary violation of the waste discharge permit. The District and Regional Board Staff worked together to identify the plan that would result in the least amount of discharge of permit violation. As anticipated, a violation of the discharge permit did occur. However, based upon comments from the Regional Board Staff, it was believed that this would not be fined as it was a defense under Water Code § 13385(j).

As a part of the 2008 relook, the mandatory minimum fine was assessed. The use of more mandatory minimum fines provides no opportunity for due process in regards to agencies and potential violations. In fact, it serves to defeat the overall goals of enforcement as it moves the potential fining into the civil arena with actions between local agencies such as SSLOCSD and its Regional Board and the State Board to

defend against fines which were deemed by the District to be unjust and contrary to present Water Code statutes.

Conclusion

In conclusion, SSLOCSD firmly supports the majority of the recommended ramp up of enforcement activity identified of Section 7 of the draft report. However, the District has specific concerns to two areas allowing for citizen enforcement and the use of mandatory minimum fines.

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By 
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