

## INTRODUCTION

SAFE (Solidarity Against Fines and Enforcement) was formed to stop the RWQCB Proposed Cease and desist orders against individual citizens the RWQCB has randomly selected for enforcement actions that includes imposition equally high charges to pump operational septic tanks at over \$200/mo per property to comply with enforcement actions. (Coincidentally as high a cost as the unaffordable project)

## BRIEF SYNOPSIS

The Central Coast Regional Water Quality Control Board enforcement actions are against both individual property owners and renters. This is unusual and especially egregious because the enforcement tool (the cease and desist order-CDO) was never meant to be applied to industry and government agencies such as sewage treatment plants. 50 randomly selected test cases to steamroll the remaining 5000 individuals has the purpose of punishing voters and could decimate an entire community. The procedures and method of enforcement deprives citizens of their due process rights, are without warnings, fair hearings, and has the power to deprive them of their homes and businesses.

### The CDO

On January 27, 2006 The Central Coast Regional Water Quality Control Board sent letters notifying 52 property owners that they were being prosecuted (persecuted) for violation of the Basin Plan prohibition against discharging from their septic tanks. The action was based upon a request from the RWQCB board chairman, Roger Briggs, to "go after" individual citizens with enforcement actions.

A "random" selection of 50 citizens by the RWQCB (Board) staff was scheduled for consolidated hearings on March 23. The conditions of the proposed CDO are to pump septic tanks every other month. This will cost a minimum of over \$200/ month or \$2400 per year. This despite the fact that NO septic tank is pumped less than once in every 3 – 5 years (depending on the usage), that it is dangerous and absolutely unnecessary to do more and that 30% of the community selected for prosecution (persecution) is on fixed or low incomes.

A request by citizens and the Los Osos Community Services District for the selection method and statistical process has been denied. Other requests for information have been ignored. The citizens have been ordered to provide confidential information to the board against their 5<sup>th</sup> Amendment rights.

Protests to the State Water Board were deliberately rebuffed or ignored. Residents were told if they failed to provide the demanded information within 5 days they would each face \$1000/day fines. The RWQCB failed to provide any warning notices, and letters were improperly served. The RWQCB regulatory guidelines for enforcement were deliberately misapplied.

Some residents requested individual hearings according to due process rights, and were denied. The RWQCB prosecution (persecution) team gave them less than 30 days to

assemble their defense documents and prepare their cases, but refused to release the name of the group so they could work together, citing privacy rights.

The RWQCB also refused to allow other citizens to join as designated parties to testify at their kangaroo haring. Citizens with little or no experience with the regulatory process were denied due process when the RWQCB did not make any effort to provide necessary information on line. The RWQCB said they had more than 8,000 pages of alleged evidence. CDO recipients were told they could make an appointment to examine the alleged 8000 pages any time M – F during normal business hours.

This prohibition is based on a 1983 prohibition against septic waste discharges prior to the establishment of the District. Homeowners were never told they could be subject to individual enforcement actions when they purchased their homes, and their septic systems are not failing.

The septic systems are not designed to remove nitrates. Therefore water discharged exceeds Basin Plan standard for 7 Mg/l (drinking water standards). They intend to meet the prohibition conditions of hooking up to a sewer when it becomes available, but have no way to individually build that system.

In fact the county and the RWQCB failed to enforce this prohibition since 1983, and in 1988 established a building moratorium zone. Yet County allowed over 1150 new homes to be built. Some of these homes are being enforced against, and a total of 5000+ individual orders affecting more than 11,000+ people has been promised by the RWQCB before the end of 2007.

In 1998 a treatment plant was to be built by the County for \$47 million, and a CSD was formed to build a less expensive project. The CSD recall occurred because they sited a \$162 million project for 4700 customers costing over \$230/month. The figures were grossly understated. The actual cost of a central deadly pathogen producing central sewer will exceed \$500 - \$7540 million dollars and cost each resident in the P. Z. between \$150,000 & \$300,000 over a 15 – 20 year time.

Background:

Los Osos has struggled for many years to hold developers at bay from “gentrifying” the community. To avoid being forced from their modest homes a CSD was formed to deliver a project that citizens could afford.

A bait and switch centralized wastewater project on the middle of the community costing the highest per capita in the entire county was approved by the RWQCB and the developer lead district board.

Two new directors vowing to revise and move the project were seated in Dec 05 work to revise the project. A recall of the three directors who refused to reduce the project costs followed. The project was bid and non competitive bids 40% over estimates were accepted. A project went from \$64 million to \$164 million.

The September 27, 2005 special election three Community Services Board members were recalled, and a controversial sewer siting ordinance called Measure B passed. The activities before and just after the election by the RWQCB and the board members

facing recall included electioneering, voter intimidation, interference with contracts for a sewer project, collusion and abuse of power.

Because the State, against funding policies, released funds for the highest per capita wastewater project just 20 days before the election, in spite of hearing several community-wide protests, hundreds of letters against indebting the community with the release of funds just before a critical election.

The RWQCB worked behind the scenes to assure spending and start of construction even after discovering the loan had no (Prop.218) authority for repayment. The State knew the project would be relocated if Measure B passed.

The ousted board (csd-3) worked with the State and RWQCB to try to bankrupt the district by assessing \$11 million in fines the day after the election. (PRR internal emails and memos) Lawsuits are pending against the State for contract interference and breach of contract. The fines assessed were retroactive \$6.6 million and are being appealed.

Helpful links:

<http://www.waterboards.ca.gov/centralcoast/>

<http://www.waterboards.ca.gov/centralcoast/documents/02-28-06RevisedHearingNoticeandPreHearingOrder.pdf>

<http://www.swrcb.ca.gov/contact/docs/phones/org.pdf>

<http://www.inspect-ny.com/septic/septtext.htm>

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=wat&group=01001-02000&file=1831-1836>

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=wat&group=01001-02000&file=1845>

<http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=wat&codebody=&hits=20>

<http://www.swrcb.ca.gov/enforcement/index.html>

The following is excerpted from a recent letter to the RWQCB prosecution staff. I have attached another letter. Other attachments and backup documentation may need to be sent.

The citizens are scrambling to understand your procedures, to respond to deadlines, hire attorneys, and protect their individual rights. The RWQCB gave no notice of their violation of the basin plan discharge limits.

Most don't know what a basin plan is. You gave no notice or individual warning to the citizens prior to selecting them for prosecution. You gave them no information on how they might comply and avoid Cease and Desist Orders being issues against their individual private property and businesses.

You met no legal standards of community warning, such as individual mailings, with a notice and explanation of their procedures for granting designated status. In fact the RWQCB informational meeting was held, not in the community, but at RWQCB board offices in San Luis Obispo, and held a day after the deadline for requesting designated party status.

The meeting was hosted by the prosecution team and seemed purposely designed to illicit information from the "randomly selected citizens" to assist the prosecution case against them.

The RWQCB met no legal standard for notification by mail of prosecution, notices were sent standard mail, and many did not receive their notices, as you stated-due to [alleged] "postal problems," within the first milestone given to submit information to the RWQCB.

In fact, you threatened \$1000/day fines for failure to submit within five days. This threat to private citizens among many who are the elderly was unnecessary and shamefully intimidating.

Citizens' petitions to the SWRCB filed requesting protection of fifth -amendment rights, and requests for individual hearings, and time extensions were rejected *as not being filed properly*.

Only after the penalties are enacted petitions can be filed. Which in that case we ask that you consider all "petitions" as complaints and requests for assistance and route them accordingly.

No effort or assistance to assure the notices to Spanish speaking residents could be understood was even attempted. In one case a resident had their minor child trying to figure out what your letter was requesting.

As stated, there is nothing wrong with form letters used by individual citizens; in fact your compressed schedule and en-mass hearings seem purposely designed to deny the citizens of their due process rights.

The time schedule the board set that allowed just days for response for those who even heard through rumor (not outreach) about what rights they might have or lose. Participation in the hearings is a basic right be that your process violates. The request for designated party status are from those very citizens who heard though rumor that you promised to prosecute them in one of the next rounds of random picks.

February is the shortest month and contains 2 long holiday weekends. These are average citizens. You are applying regulations usually applied to public agencies or businesses where an environmental compliance officer deciphers such orders and expert attorneys respond. The arrogance of the rejection response to valid concerns for fair treatment, and lack of help in complying with your demands is apparent from the tone of your response.

Allowing for the fact that many did not learn of the board actions, understand the restrictive procedures, or the convoluted public notices that were available only by website, unavailable to some, and difficult to navigate for others, their sincere effort to be heard at the hearing, and their method for response was a legitimate and valid request for designated party status and should be honored.

There are so many other problems and issues with this draconian approach, I ask that you rethink this entire process and consider entering into structured negotiations with the Los Osos CSD for a community-wide remedy.

It is my hope that you will conduct the hearings with an eye toward justice and not hide behind the restrictive regulatory statutes and timelines to protect your position for prosecution. These are average citizens and they deserve the opportunity to defend their rights and interests, and to be heard in individual hearings.

Sincerely,

Solidarity Against Fines and Enforcement (SAFE)  
Los Osos