

**STATE OF CALIFORNIA  
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL COAST REGION**

**STAFF REPORT FOR REGULAR MEETING OF FEBRUARY 10-11, 2005**

Prepared on January 7, 2005

**ITEM NUMBER: 31**

**SUBJECT: Executive Officer's Report to the Board**

Brief discussion of some items of interest to the Board follows. Upon request, staff can provide more detailed information about any particular item.

Conditional Certification is appropriate when a project may adversely impact surface water quality. Conditions allow the project to proceed under an Army Corps permit, while upholding water quality standards.

**WATER QUALITY CERTIFICATIONS**

[Sandy Cheek 805/542-4633]

In general, staff recommends "Standard Certification" when the applicant proposes adequate mitigation. Measures included in the application must assure that beneficial uses will be protected, and water quality standards will be met.

Staff will recommend "No Action" when no discharge or adverse impacts are expected. Generally, a project must provide beneficial use and habitat enhancement for no action to be taken by the Regional Board. A chart on the following page lists applications received from November 1, 2004 to December 31, 2004.

**WATER QUALITY CERTIFICATION APPLICATIONS RECEIVED FROM NOVEMBER 1, 2004 THROUGH DECEMBER 31, 2004**

County	Date Received	Applicant	Project Description	Receiving Water	Project Location	Action Taken/ Certification Date
Santa Barbara	11/5/04	Anthony Brown, Atlantic Richfield Company	PRC-421 Revised Project	Pacific Ocean	Offshore Goleta	Certified 12/16/04
Santa Barbara	11/22/04	Karl Treiberg, Santa Barbara County Flood Control District	Annual Flood Control Maintenance Plan	Various	Various locations around Santa Barbara	Pending
Santa Barbara	11/24/04	Bruce Nybo, City of Santa Maria Public Works	Union Valley Parkway Extension Interchange Project	Unnamed tributary Betteravia Lakes	Santa Maria	Pending
Santa Barbara	11/19/04	Randy Wheeler, McCadden Development	Rice Ranch	Pine Canyon Creek	Orcutt	Certified 12/20/04
San Luis Obispo	12/8/04	Gary Ruggerone, Cal Trans	State Route 41 Culvert Replacement	Unnamed drainage to Morro Creek	East of Morro Bay	Certified 12/21/04
San Luis Obispo	12/13/04	Glen Priddy, San Luis Obispo County Public Works Department	Turri Road Bridge at Warden Creek, Replacement Project	Warden Creek	East of Los Osos	Pending
Monterey	12/14/04	Gary Ruggerone, Cal Trans	Culvert Replacement at MON-1-PM 13.58 05-EA-OL2401	Unnamed drainage to Plaskett Creek	Big Sur Coast, South of Gorda	Certified 12/22/04

San Luis Obispo	12/16/04	Pete Pedroni, Cuesta College	Hollister Bridge Replacement Project	Chorro Creek	Cuesta College Campus	Pending
Santa Barbara	12/16/04	Darwin Sainz	Las Flores Erosion Control Project	Las Flores Creek	Canada de Las Flores	Pending
San Luis Obispo	12/17/04	Glen Priddy, San Luis Obispo County Public Works Department	San Luis Bay Drive Bridge Replacement Project	San Luis Obispo Creek	Avila Beach	Pending
San Luis Obispo	12/17/04	Lori Atwater, Mountainbrook Community Church	Mountainbrook Community Church	Unnamed tributary to Froom Creek	South of San Luis Obispo	Pending
Santa Barbara	12/24/04	Joseph and Maria Fazio	Fazio Farm Infrastructure Improvements	Unnamed tributary to Garrapata	Carpinteria	Pending
Santa Clara	12/27/04	Ralph Cristofaro	Cristofaro Grading Abatement	Panther Creek	Gilroy	Pending

### Watershed Reports

CalEPA Enforcement Initiative [Roger Briggs 805/549-3140 - Thanks to Steve Morse of Region 2]

Governor Schwarzenegger appointed Terry Tamminen as Cabinet Secretary. In the last days of Secretary Tamminen's tenure as Secretary of Cal/EPA, he signed a directive to the Boards, Departments, and Offices (BDOs) of Cal/EPA to initiate significant changes to their enforcement programs. This initiative is intended to implement Action Item #6 in Governor Schwarzenegger's Action for the Environment to "protect California's environment through the tough enforcement of existing laws". The directive notes that while the BDOs could benefit from additional staff to accomplish the initiative, there is no promise of additional resources, and "it is critical that we make enforcement enough of a priority that we do an excellent job of it with existing staff levels." There are indications that Cal/EPA is preparing a request for additional resources to implement the initiative, but there is no indication that they will be forthcoming.

The initiative culminates an assessment by Cal/EPA's legal staff of the current status of the BDO's enforcement and directs eleven concrete actions to be taken by the BDOs by May 1, 2005, to improve enforcement. They are: 1) Single Complaint Tracking System, 2) Enforcement Program Operational Plan, 3) Enforcement Intelligence Team, 4) Create a Cal/EPA Wide Data Dictionary, 5) U.S. EPA Facility Registry System (FSR) Number, 6) Environmental Information

Exchange Network (EIEN), 7) GIS Integration, 8) Regional Cross-Media Training Program, 9) Creation of Cal/EPA Regional Training Centers, 10) Enforceable Permits and Regulations, and 11) Communication Strategy.

While we cannot disagree with the need for a strong enforcement program, it appears that it will only come with the redirection of existing resources. For example, Action 9 specifically includes a Cal/EPA Regional Training Center to be located in regional offices. We don't know if that means our office. Other tasks are not as well defined at this time but will require redirection for equipment and support resources (e.g., computers, computer support staff, etc.), training, implementation, and reporting. This initiative comes after several years of significant resource reductions and redirections. This re-emphasis and redirection will put even more strain on managing our available resources and meeting our current priorities. There are early indications from Cal/EPA that it expects up to 15% of staff to be fully dedicated to enforcement tasks. However, it is also still somewhat unclear what tasks are to be considered enforcement, e.g., all site cleanups are enforcement of unauthorized spills, and our work with district attorneys on significant enforcement actions is not yet fully captured in our reporting systems. Specific directions are not yet forthcoming; and many of the tasks need workplans and time schedules to meet the deadline. I will keep you informed as we get further direction and information. Former Secretary Tamminen also stated in his directive that he looks forward to monitoring the success of

the initiative in his new office as Cabinet Secretary for the Governor.

NPDES Permit Standardization [Roger Briggs 805/549-3140 - Thanks to Gina Kathuria of Region 2]

As I reported in my last EO Report, we are working with the State Board on a new database for permitting and compliance tracking (CIWQS – California Integrated Water Quality System), in addition to new templates for NPDES permits. Starting mid-2005, NPDES permits for wastewater dischargers will get an “extreme-makeover.” In an effort to standardize NPDES permits amongst all water boards, the State Board is developing a statewide permit template. This template is only applicable to municipal and industrial dischargers, not stormwater NPDES permits. The State Board’s goals are to improve consistency, reduce petitions, provide guidance to permit writers, and facilitate data collection into a statewide electronic reporting system (eSMR). The new reporting system is to be functional by July 2005. We have been proactively working with the State Board in this effort, and see permit standardization as beneficial.

The major difference between the template and our current permits will be their format. All the basic elements of our permits will be retained, but they will be rearranged in a different order. For example, the template presents the effluent limitations at the beginning of the permit; in our current permits, they are at the end. This reformatting will also help our dischargers and interested public “cut-to-the-chase” for what the permits require.

Future phases of permit standardization will go beyond reformatting into more of the substance of permit requirements. This next effort has already started and will be more involved because each water board’s basin plan dictates how many and what requirements are included in a permit. As such, we will continue to work with State Board staff closely.

Los Osos Wastewater Project Update [Sorrel Marks 805/549-3695]

On January 4, 2005, the State Water Resources Control Board (State Board) held a workshop

regarding the State Revolving Fund (SRF) loan for the Los Osos wastewater project. Regional Board Senior Engineering Geologist Gerhardt Hubner attended and spoke in support of the Los Osos Community Service District’s request for a \$93 million dollar SRF loan. State Board members expressed support for completion of the community wastewater project, but made clear that if construction does not begin this summer the SRF loan commitment will expire and used to fund the large backlog of projects Statewide. On January 20, 2005, the State Board unanimously approved SRF funding for the Los Osos project.

On January 6, 2005, I attended the Los Osos CSD Board of Director’s meeting, accompanied by Regional Board staff members Gerhardt Hubner and Sorrel Marks. I made a brief presentation regarding Regional Board’s historical and current role in resolving water quality issues in Los Osos. I also expressed our expectation that the project move forward, and clearly stated that new alternatives and siting evaluation would result in my recommending enforcement of Time Schedule Order 00-131 (\$10,000 per day penalties). State Board members stated similar expectations during their January 4, 2005 workshop.

On January 19, 2005, the Coastal Commission issued the Coastal Development Permit (approved by the Commissioner’s in August, 2004), and the Los Osos CSD is scheduled to advertise for construction bids January 21, 2005. Additional information regarding the wastewater project status and projected progress is summarized in the Los Osos CSD’s quarterly status report (See **Attachment No. 1**).

**Status of Los Osos Community Services District Lawsuits by Concerned Citizens of Los Osos -** Three lawsuits by the Concerned Citizens of Los Osos (CCLO) are currently pending. The Regional Board is not named in any of them:

*Concerned Citizens of Los Osos (CCLO) v. California Coastal Commission (CCC) and County of San Luis Obispo, San Luis Obispo Superior Court No. CV 040842:*

This action previously named the State Board and the District, and alleged certain actions by the Regional Board. CCLO amended the complaint to eliminate the claims against the State Board and District. The action seeks to invalidate the Coastal Commission’s coastal development permit (CDP)

to the treatment plant under various theories, including failure to comply with the local coastal plan, the CCC's providing unlawful assistance to the District, violation of the automatic stay of the County's CDP that resulted from the CCC appeal, premature project approval, and that the Estero Area Plan on which the CDP is based is obsolete.

*Concerned Citizens of Los Osos (CCLO) v. State Board et al, San Luis Obispo Superior Court No. CV 041047:*

CCLO filed a petition for writ and complaint for injunctive and declaratory relief against the State Board, California Coastal Commission and Los Osos Community Services District (District). The first cause of action alleges the State Board violated or is about to violate provisions of the California Coastal Act by committing State Revolving Fund loan funding to the District's wastewater treatment and collection system project before the Coastal Commission issues permits under Public Resources Code section 30412. This cause of action also alleges that CCC and the District violated section 30412. The second cause of action makes a similar claim under Public Resources Code section 30601 against the District. The third cause of action alleges that unpermitted discharges of shallow groundwater and well filtration backwash violates the California Coastal Act and Local Coastal Program. The second and third causes of action do not involve the State Board.

*Concerned Citizens of Los Osos (CCLO) v. Los Osos Community Services District, San Luis Obispo Superior Court No. CV 050060:*

This action alleges that the District violated Proposition 218 by passing Resolution No. 2004-41, which adopted a Wastewater Revenue Program. Regional Board counsel has not reviewed the Wastewater Revenue Program or the Resolution, but it appears that the Resolution adopted a draft Revenue Program as required by the State Revolving Fund Loan guidance. Proposition 218 requires voter approval of certain local taxes and property-based (as opposed to use-based) fees.

### Regionwide Reports

Total Maximum Daily Load Program [Lisa Horowitz McCann 805/549-3132]

Staff has been engaged in the following high priority activities during the past and upcoming month:

- San Lorenzo River Sediment TMDL- pursuing implementation and seeking funding for numeric target monitoring,
- Pajaro River Sediment TMDL- completing the Final Preliminary Project Report and draft Basin Plan Amendment documents (including Final Project Report),
- Pajaro River Nutrient TMDL- completing the Final Preliminary Project Report.

Staff completed the following project deliverables by December 2004 as scheduled:

- Aptos/Valencia Creeks Pathogen TMDLs - progress report due and completed 12/04,
- San Lorenzo River Estuary Pathogen TMDL - progress report due and completed 12/04,
- Soquel Lagoon Pathogen TMDL - progress report due and completed 12/04,
- Los Osos Creek Nutrients TMDL - presentation to Regional Board due and completed 12/04,
- Salinas River Pathogens TMDL - progress report due 1/05 but completed 12/04,
- Salinas River Nutrient TMDLs - data analysis report due 12/04 and completed 1/10/04,
- San Luis Obispo Creek Pathogen TMDL- presentation to Regional Board due and completed 12/04.

Staff is in the process of completing the following overdue project deliverables:

- Salinas River Watershed Area Pesticides TMDLs -Final Project Report, overdue on 12/04, expected 1/31/05;
- Watsonville Sloughs Pathogen TMDL - Final Preliminary Project Report overdue 12/04, expected 1/31/05.
- Pajaro River Nutrients TMDLs- Final Project Report due 11/04, expected to be completed by 3/30/05,
- Pajaro River Sediment TMDLs- Final Project Report due 11/04, expected to be completed by 1/31/05.

We will be recruiting two new staff to develop TMDLs in the Watershed Assessment Unit. Doug Gouzie resigned from state service to accept an academic position teaching geology at Southwest Missouri State University. Doug's last day with the Regional Board was January 3, 2005. Mark Angelo will be transferring into one of the new positions to implement our new agricultural water quality program through the Conditional Waiver for Agricultural Discharges. This transition will probably be completed by March 1, 2005.

At the state level, the TMDL Program is developing a program improvement strategy to make best use of funds supporting TMDL development and create accountability for steps taken toward improvement. Key components of the improvement strategy include clarifying TMDL Program goals (e.g., completing lots of TMDLs versus completing TMDLs that solve most important water quality problems), providing training, focusing on program management (including *project* planning and management), developing new performance measures, creating mechanisms to tell TMDL success stories, and planning for future TMDL implementation and monitoring.

Regional Monitoring and Basin Planning [Karen Worcester 805/549-3333]

CCAMP is conducting regular monthly monitoring at thirty-three coastal confluence sites and thirty sites in the Pajaro and north coast watershed rotation area. January marks the first time in two years that we will be conducting watershed rotation monitoring. It is also the first time we have included flow monitoring as a regular component of our monthly sampling. This has meant a new field intensive effort that is keeping our three-person field crew very busy.

A statewide Surface Water Ambient Monitoring Program (SWAMP) bioassessment subcommittee has been evaluating sampling protocols for benthic invertebrate monitoring and is making recommendations to change the state standard protocols. This has involved intensive studies to understand how the various protocols compare and to develop mechanisms to incorporate old data with more recent data collected with new

protocols. There has been considerable evaluation of protocols for higher gradient riffle-pool habitat, but work is needed to develop parallel protocols for lower gradient systems. These include the lower ends of our larger watersheds where the agricultural waiver monitoring program will be conducted. We have submitted a small grant proposal to U.S. EPA to conduct protocol comparisons in low-gradient systems. Work will be conducted side-by-side with existing sampling efforts (such as that of CCAMP or the Cooperative Monitoring Program for Agriculture). Karen Worcester has been invited to attend a conference on bioassessment in the arid west in Phoenix in February, with funding provided by U.S. EPA. This conference will help us to move forward in our efforts to develop biocriteria and tiered aquatic life uses.

CCAMP staff has been aiding U.C. Davis researchers in analysis of protozoal and bacterial data from coastal California. In particular, we have provided assistance in modeling flow and precipitation outputs associated with mussel monitoring sites in areas ranging from Bodega Bay south to Morro Bay. One paper has been submitted for publication in the International Journal for Parasitology; another is still in development.

**Data Management and Monitoring Program Development for the Agricultural Waiver Program** - The web-based registration system for the Ag Waiver program was launched in early December following a week-long intensive "beta-testing" effort on the part of staff. The data entry system provides forms for Notice of Intent, Ranch Information, and Management Practice Reporting. We have also proceeded with design of a web based monitoring data reporting system which incorporates required data elements of the Surface Water Ambient Monitoring Program and the California Integrated Water Quality System.

The CCAMP team has spent a number of days recently working with the new monitoring team hired by Central Coast Water Quality Preservation Inc., the new non-profit formed to support the Cooperative Monitoring Program for Agriculture. The consulting team includes Larry Walker and Associates and Pacific Ecorisk. CCAMP staff met with the team and representatives from the agricultural industry to review field and analytical

protocols, data management procedures and quality assurance requirements to ensure that the new Cooperative Monitoring Program is compatible with CCAMP and SWAMP. Mary Adams, CCAMP field coordinator, has taken the consultant team and local agriculturalists on field visits to all proposed sites to discuss access, flow monitoring, and other sampling considerations. Agreement has been reached on the final site list; the Quality Assurance Program Plan will be amended to include this list and will be finalized. Monitoring will begin in the second half of January.

#### Summary of Ag Waiver Outreach Activities -

Regional Board staff put on three waiver workshops for technical assistance providers. These were very well attended (combined total attendance was over 100). In addition, staff made presentations at nine of the UC/NRCS Farm Water Quality Planning short courses, including one in Spanish, made approximately eighteen other presentations at various agricultural meetings, including four in Spanish and one in Chinese, and attended nine waiver enrollment workshops sponsored by agricultural industry groups to assist growers in completing the enrollment forms.

Staff responded to more than 600 waiver-related phone calls and emails, answering questions about waiver requirements, the enrollment process, and the on-line enrollment system. More than 200 enrollees used the on-line system, which was in line with expectations, considering that it did not become available until the second week in December. Staff is currently inventorying submittals to get a preliminary estimate of the level of enrollment for each county, and has hired two students to assist with entering the information into the waiver data management system.

Staff also did a mass mailing of 2500 flyers to inform the agricultural community of the new requirements. In addition, the agricultural industry did a tremendous amount of outreach, putting on more than thirty workshops to assist farmers in completing farm plans and enrollment forms. A more complete status report on the agricultural waiver program will be provided as part of the March Regional Board meeting agenda package.

#### Collection System Regulation [Lori Okun 916/341-5165]

1. Whether collection system management requirements can be issued to the tributary collection systems as NPDES permits rather than WDRs

The Regional Board asked counsel at the October 2004 meeting to issue an opinion whether it can issue NPDES permits, rather than WDRs, to operators of tributary collection systems, where the operators do not participate in the treatment plant operation or management. EPA has informally taken the position that regional boards can issue no-discharge NPDES permits (i.e., NPDES permits that prohibit all discharges) to collection system operators. (See attached e-mail from Ken Greenberg to Bryan Brock, **Attachment No. 2**) EPA also took this position formally, when it issued draft regulations regulating collection systems in January 2001. The Bush administration withdrew the proposed regulations, commonly referred to as "CMOM" (capacity, management, operation and maintenance) regulations, shortly after taking office. EPA intends to reissue the regulations but recently refused to confirm whether that would occur this year. (*Inside EPA's Outlook 2005*, Jan. 2005 Special Report.)

Despite EPA's position, for the reasons discussed below, it would be premature at this time for the Regional Board to issue NPDES permits to non-POTW operators. Therefore, no further legal analysis is necessary.

As the Board knows, the State Board is developing a program to regulate sanitary sewer overflows (SSOs). State Board Resolution No. 2004-0080 requires State Board staff to, among other things, propose a program by November 2005 "to develop a proposed Sanitary Sewer Overflow Reduction Program that will direct publicly owned collection systems to develop and implement [Sewer System Management Plans] that incorporate appropriate funding and management practices, provide consistent Statewide reporting of SSOs, explore SSMP and operator certification, and propose appropriate enforcement guidelines ..." <sup>1</sup> (see **Attachment No. 3**). State Board staff has formed a SSO Guidance Committee that includes various stakeholders. The Guidance Committee is

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<sup>1</sup> A copy of the Resolution is attached.

exploring WDRs and NPDES permits as two of the options for the SSO Reduction Program. Once the State Board adopts its program, the Regional Board can consider whether to rescind the WDRs it has already issued to collection systems in order to allow the dischargers to enroll in the State Board's program. Assuming the State Board adopts a general permit, it would most likely allow the regional boards to issue site-specific permits as appropriate. Thus, if the Regional Board decided that the existing WDRs were more appropriate for the systems in the Central Coast Region, the Regional Board would have the option of leaving those WDRs in place, or considering at that time whether NPDES permits would be more appropriate.

The collection system operators in Santa Barbara and Goleta expressed interest in enrolling in the State Board's program at the October, November and December Regional Board meetings. After reviewing the State Board's program, the Regional Board and the public might agree with that course of action. However, NPDES permits can only be terminated or rescinded in limited situations. Therefore, even assuming no-discharge NPDES permits can legally be issued for tributary collection systems, Regional Board counsel does not recommend doing so until after the Regional Board has the opportunity to review the State Board's program. In the interim, WDRs provide adequate regulation of the tributary collections systems, and the Regional Board can rescind them at any time to allow for enrollment in the State Board's program.

Several system operators have argued that the Regional Board should not impose *any* new requirements (whether WDRs or NPDES permits) pending development of the State Board program. Both Goleta Sanitary District and Goleta West Sanitary District filed State Board petitions challenging their collection system maintenance requirements on this basis, among others. (State Board Petition Nos. State Board/OCC A-1680 and A-1684, respectively.)<sup>2</sup>

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<sup>2</sup> Since the petitions are pending litigation, any discussion of these petitions should occur in closed session.

## Cleanup Reports

Underground Tanks Summary Report dated January 5, 2005 [Burton Chadwick 805/542-4786]

[See Attachment No. 4]

## Administrative Reports

Presentations and Training [Roger Briggs 805/549-3140]

On November 17 and 18, 2004, Senior Engineering Geologist, Burton Chadwick, attended "Leading Change" training conducted by the Water Board Academy. The course, the last in a series of three classes, discussed successful approaches to leading large-scale organizational changes.

On December 17, 2004, Ms. Diane Kukol of Regional Board staff attended a US EPA Wetlands Restoration Training class/tour in Pacifica, California. Wetlands restoration is a critical component of the Unocal Guadalupe Oil Field and Unocal San Luis Obispo Tank Farm soil and groundwater cleanup projects in the Central Coast Region.

On January 25, 26 and 27, 2005, Regional Board staff, Mr. Hector Hernandez and Mr. Bill Arkfeld, attended a Contaminant Chemistry and Transport Training class in Sacramento, California. In November 2004, Msrs. Hernandez and Arkfeld were assigned to the Spills, Leaks, Investigation, and Cleanup Program at the Central Coast Regional Board. Mr. Hernandez is now overseeing oil field-related cleanup projects located in San Luis Obispo and Santa Barbara Counties. Mr. Arkfeld is now overseeing groundwater cleanup cases in Santa Barbara County and the Texaco Estero Tank Farm, Chevron Estero Marine Terminal, and Mobil Pipeline cleanup cases in Morro Bay.

**ATTACHMENTS**

1. Los Osos CSD January 12, 2005 Quarterly Status Report
2. E-mail from Ken Greenberg to Bryan Brock
3. SWRCB Resolution No. 2004-0080
4. Underground Tanks Summary Report dated January 5, 2005

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