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Hillary Hauser

Thursday, May 12, 2005

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Mr. Roger Briggs, Executive Director
 Mr. Jeffrey Young, Chair
 Central Coast Regional Water Quality Control Board
 895 Aerovista Place, Suite 101
 San Luis Obispo, CA 93401-7906

SENT BY FAX 805 543-00397
 and FedEx

Re: Request for immediate Cease & Desist/Clean-up and Abatement Order for Septic System use at the Rincon Point Community, Santa Barbara County

Dear Mr. Briggs and Mr. Young:

HONORARY BOARD

Sally Bromfield

J'Amy Brown

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Julia Louis-Dreyfus

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Jane Maassen

Heal the Ocean, a non-profit California corporation dedicated to protecting and preserving the water quality in Santa Barbara County, urgently requests regulatory action from the Regional Water Quality Control Board in the matter of the public health hazard posed by the septic systems in use at the Rincon Point residential community in south Santa Barbara County.

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Specifically, we request the Regional Water Quality Control Board to issue an immediate Cease & Desist/Clean-up and Abatement Order for septic system use in the Rincon Point community.

We have provided your staff, Mr. Mike Higgins with documentation that establishes the septic-ocean pollution link, along with a copy of this letter. We have asked Mr. Higgins to advise your Board of some facts in the following documents:

- "Rincon Creek Watershed (DNA) Study" October 1999
- Jeremy Koonce/Santa Barbara County memo January 28, 1999
- Questa Engineering "Sanitary Survey" March 2003 – individual pages
- FEIR "Carpinteria Sanitary District's South Coast Beach Communities Septic to Sewer Project" – Introduction (pages 1-1 to 1-12).

LEGAL COUNSEL

Coast Law Group, LLP

ADMINISTRATION

Teri Taylor

The Rincon Point residential community (73 parcels with 72 homes) is transected by Rincon Creek. Frequent beach closures and health advisories due to high coliform bacteria levels in the ocean fronting the areas identified above, together with petitions from over 1,000 surfers complaining of health problems after surfing at the Rincon (one of the world's favored surfing spots) has led to scientific testing (including DNA testing by Santa Barbara County Environmental Health Services and Heal the Ocean in 1999) – that points to the direct link between ocean pollution and the Rincon Point septic systems.

The urgency of this request cannot be stressed enough. A Final Environmental Impact Report (FEIR) for the "South Coast Beach Communities Septic to Sewer Project" (including Rincon) was completed at a cost of \$425,000 and paid for by Proposition 13/Costa Machado funds). This FEIR, approved in September 2004 by the Carpinteria Sanitary District is for converting five beachside communities to sewer - Rincon Point, Sand Point Road, Sandyland Cove, Padaro Lane and Beach Club Road communities. These communities are located within the unincorporated portion of Santa Barbara County and a portion of the Rincon Point Community is located within unincorporated Ventura County.

The "South Coast Beach Communities Septic to Sewer Project would convert 180 homes from septic to sewer. The majority of residents desire (some of them desperately) to abandon their faulty septic systems and hook up to public sewer.

However, three (3) homeowners in the Rincon community have filed a series of lawsuits to stop the process, even though their neighbors want to hook up to sewer, and even though the scientific evidence links their community's septic systems to the severe ocean pollution problems in this area.

These lawsuits have alleged everything from Carpinteria Sanitary District (CSD) committing taxpayer fraud by accepting the \$425,000 EIR funds from the state, to Heal the Ocean and CSD violating the Brown Act in our mutually agreed arrangement that Heal the Ocean pays CSD's legal fees to defend the district in these lawsuits.

Heal the Ocean has agreed to pay these legal fees because CSD is not allowed to spend ratepayer funds for annexing new customers into its District. Without outside financial assistance, this septic-to-sewer project would fold immediately.

As of today, Heal the Ocean has expended over \$60,000 for this legal battle, and we are not yet in court.

At this rate, this project will be lost -- as well as the opportunity to rid this area once and for all of the septic systems that have proven to be major pollution sources of the ocean in this area -- where many people, including surfers from all over the world, come here to recreate in the ocean. *We need regulatory help* to assist us in completing the final steps of this project.

The documents submitted with this letter to Mr. Higgins prove that the continued use of septic systems along this stretch of coastline is a threat to public health and safety. Santa Barbara County Public Health Department, as well as the Environmental Health Services of both Santa Barbara and Ventura counties, have recommended the removal of septic systems from this stretch of coastline where so many people recreate in the ocean, and the evidence of septic system contamination is as follows:

Santa Barbara County Testing/Koonce Memo. Between October through December 1998, the County of Santa Barbara conducted water testing at seven locations in the Rincon Point area. On

the beach in front of the Ventura side of the Rincon home enclave, detergents were found leaching into the sand on the beach, indicative of septic system flow to the ocean from the Rincon Point enclave.

As stated in the Santa Barbara County/Jeremy Koonce memo of January 28, 1999 (Mr. Higgins has a copy), the December 1998 sampling from the leaching zone of the beach on the Ventura side revealed nitrates (NO₃) and significant levels of Methylene Blue Active Substances (MBAS).

As noted in Koonce memo (which has been included in the FEIR for the South Coast Beach Communities Septic to Sewer Project):

“MBAS’ show the presence of apparent detergents or foaming agents which are indicators of septic or sewer effluent and can be detected at low levels. The conclusions derived from the testing were that there were significant levels of MBAS and nitrates sampled at the beach and creek of the Rincon Community. MBAS levels were significant at the leaching zone of the beach. Thus it was concluded that septic system effluent flows from the septic systems to the ocean as well as the lagoon.”

Although the County reported that lack of bacteria previously identified in water leaching from the beach “may be caused by effective bacterial treatment by the septic systems, the filtering action of the subsurface material, or both,” the leaching of leaching of septic systems to the beach was proven in the county’s MBAS test.

Environmental Health Services/Heal the Ocean DNA Testing. Then, in October 1999, DNA testing of the Rincon watershed was undertaken by Santa Barbara County Environmental Health Services (EHS) and Heal the Ocean in a collaborative \$36,000 project. Samples from Rincon Creek above the lagoon, in the lagoon and in the nearby ocean surf zone, were collected by EHS and processed in the laboratory of Dr. Mansour Samadpour of the University of Washington School of Public Health.

Dr. Samadpour used advanced genetic evaluation techniques (DNA) to differentiate the types of bacteria contained in water samples, which numbered more than 100 samples, taken on 10 separate occasions from three designated stations in the watershed.

The results of this study, published in October 28, 1999 as the “Rincon Creek Watershed Study” issued by Santa Barbara County Environmental Health Services, states the following:

“The fact that human species matches were the most prevalent identified source and were also present in water samples from each sampling date indicate a potential for increased public health risk associated with recreational water contact. Although zoonoses (human illness attributed to animal sources) are not uncommon, there is a much greater risk of human illness when human waste products (e.g. sewage) are present.”

“Matches to human species were only noted in the lagoon and ocean sample locations. No human species matches were associated with water samples collected at the culvert sample location or the one sample collected at the Long Creek Tributary site. Previous creek surveys performed as a part of Project Clean Water in the fall of 1998 and course sample work as part of this study did not demonstrate a current problem with human encampments in the watersheds. As there are only isolated residential areas further back into the watershed, it appears that a link between septic systems in the Rincon Point residential area and the adjacent lagoon and beach areas is likely.”

The entire text of this DNA study has been submitted to Mr. Higgins.

Environmental Health Services “Questa” Sanitary Survey. Santa Barbara County completed a “Septic System Sanitary Survey” in 2003, giving a “High” problem rating to Rincon Point because of:

- High groundwater conditions and small lots not amenable to correction with onsite technologies.
- Less than 10% siltstone, mudstone and sandstone of questionable suitability.
- Older systems with encroachment on groundwater.
- Immediately adjacent to lagoon and beach areas.

Cease & Desist/Cleanup and Abatement Needed. The septic systems of the Rincon Point community continue to pose a serious threat to the health of all surfers and other ocean users in this area. The completion of the septic-to-sewer project at Rincon Point and its neighboring beach communities is crucial to water quality improvement in Santa Barbara County.

At present, CSD is conducting additional engineering studies for the Rincon portion of the project, as well as additional EIR work, and CSD plans to approve the septic-to-sewer project as soon as this summer. At this point, the homeowners can vote to annex themselves into the Carpinteria Sanitary District and the sewer project will be funded.

However, the lawsuit filed by the Oppositionists, which was thrown out of court on May 3, 2005 as “unripe” (CSD had not yet approved the project) is certain to be filed when CSD does approve the project/files its Notice of Approval.

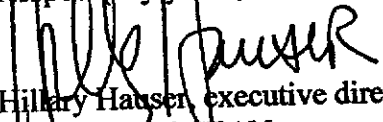
Given these facts, and given that the state is in the process of moving AB 885 regulating septic systems through legislative channels, we believe the RWQCB has an obligation to recognize the water quality issues at stake here – and to take appropriate action to ensure the correction of this problem.

This is why Heal the Ocean is asking your Board to enact, as soon as possible – for discussion and approval at your July 9, 2005 Board Meeting – a Cease and Desist Order for the use of septic systems at Rincon Point, as well as a Cleanup and Abatement order that requires a time schedule for residents to develop an appropriate course of action for getting rid of this pollution problem.

Since the majority of the residents in all the areas (including Rincon!) are anxious to move forward with the septic-to-sewer project, and since public sewer is now nearly immediately available to these residents, this is not an unreasonable request that puts hardship on anybody.

Again, Heal the Ocean wishes to stress the important point that if regulatory assistance is not forthcoming, soon, the state of California may lose the opportunity for a very long time to rid this coastal area of a proven menace to public health.

Respectfully yours,


Hillary Hausen, executive director
HEAL THE OCEAN

Cc: Mr. Mike Higgins, RWQCB, together with enclosures:

- 1) "Rincon Creek Watershed (DNA) Study" October 1999
- 2) Jeremy Koonce/Santa Barbara County memo January 28, 1999
- 3) Questa Engineering "Sanitary Survey" March 2003 – individual pages
- 4) FEIR "Carpinteria Sanitary District's South Coast Beach Communities Septic to Sewer Project" – Introduction (pages 1-1 to 1-12)