



# California Regional Water Quality Control Board Central Coast Region



Linda S. Adams.  
Secretary for  
Environmental Protection

895 Aerovista Place, Suite 101, San Luis Obispo, California 93401-7906  
(805) 549-3147 • Fax (805) 543-0397  
<http://www.waterboards.ca.gov/centralcoast>

Arnold Schwarzenegger  
Governor

August 18, 2009

Beverly De Witt-Moylan  
1516 17<sup>th</sup> Street  
Los Osos, CA 93402

Dear Ms. De Witt-Moylan:

This is in response to your email dated July 20, 2009. I apologize for the delay, but I was on vacation at that time.

I have tried to distill your message into a few salient questions, and have provided a response to each. Please be aware that this response comes from the Water Board's enforcement staff, and does not necessarily represent the positions of the Water Board itself or of its advisory staff. The cease and desist orders (CDOs) referred to in this letter are the 13 issued by the Water Board to Los Osos residents between December 2006 and May 2007.

1. What requirements does a cease and desist order impose when a CDO holder moves or sells the subject property?
2. What requirements does the settlement agreement impose when a settlement agreement signer moves or sells the subject property?
3. Can a CDO holder agree now to settle in exchange for the Water Board's rescinding the CDO?
4. Does violation of the CDO expose CDO holders to daily fines back to 1988?
5. Is the county project delayed?
6. If so, is the Water Board forced to commence enforcement action?

**What requirements does a CDO impose when a CDO holder moves or sells the subject property?**

The pertinent parts of the cease and desist order state the following:

"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."

CDO holders are required to inform the new owner and the Water Board if they sell the property. However, the order is silent on the issue of whether the order continues in effect after the sale of the property. It is the enforcement team's position that the order is no longer in effect upon sale of the property, either upon the original CDO holder or upon the new owner.

**What requirements does a settlement agreement impose when a settlement agreement signer moves or sells the subject property?**

The settlement agreement contains two paragraphs very similar to those found in the cease and desist order:

"3. Discharger shall inform any subsequent owner or occupant at the Site of this Agreement and provide a copy of the Agreement. For the purposes of this Agreement, the Discharger understands that he or she is liable for the use of the Septic System, while the Discharger owns the Site, including but not limited to use of the Septic System by any tenant or any other person occupying the Site.

4. The Discharger, if a 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."

In addition, the settlement agreement contains the following paragraph:

"This Agreement shall terminate when the Discharger 1) connects the Site to a community wastewater collection and treatment system, or otherwise permanently ceases all discharges from the Septic System, or 2) is no longer the owner of the Site provided the Discharger has complied with Paragraph C.3 and C.4, above."

This last paragraph clearly indicates that the settlement agreement terminates upon sale of the property. This is the information that I relayed to the Mortaras.

**Can a CDO holder agree now to settle in exchange for the Water Board's rescinding the CDO?**

As indicated in my response to the first question, it is the enforcement team's position that a cease and desist order is no longer in effect upon sale of the property. Regardless, the time to agree to the terms of the settlement agreement has passed. All parties had an equal opportunity to accept the settlement; 13 instead chose to proceed to hearings.

**Does violation of the CDO expose us to daily fines back to 1988?**

Violation of the CDO exposes the CDO holder to enforcement action, including imposition of civil penalties. However, any penalties imposed would be based only on the number of days that the CDO holder was actually in violation of the CDO. Imposition of penalties for violation of the CDO would require a new, separate Water Board action, including a public hearing. No enforcement related to violations of a CDO is being contemplated at this time.

The idea that the Water Board could impose penalties back to 1988 may come from a June 1, 2007 letter from Water Board enforcement staff. That letter included this language:

“(P)lease 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.”

This means that, theoretically, the Water Board could impose monetary penalties on any person owning or using a septic system in the prohibition zone. The potential penalties have been accumulating since the prohibition was enacted in January 1988 or when the person purchased the property or began residing in the prohibition zone, whichever date is later. This language applies to all residents and property owners in the prohibition zone, regardless of whether they received an NOV, CDO, settlement, or nothing at all. Technically, the Water Board could take enforcement action even against a person who had moved from the prohibition zone, based on the length of the time that the person resided or owned property in the prohibition zone.

**Is the county project delayed?**

Since the county successfully passed an assessment to fund a community sewer system, the CDOs and settlement agreements do not require hooking up to a community sewer system by any particular date. As long as the county is making progress on such a system, CDO holders are in compliance with the order. If the Water Board determines that the county's work has materially ceased, then the orders require cessation of your septic system discharge within two years. The Water Board is closely following the county process and does not anticipate making such a determination in the foreseeable future.

**If so, is the Water Board forced to commence enforcement action?**

If the Water Board were to determine that the county's work had materially ceased, a two-year clock requiring cessation of septic system discharges would then start. At the end of the two years, if CDO holders and settlement agreement signers had not ceased discharging, they would be in violation of the orders and subject to enforcement. At that time, the Water Board, at its discretion, would have the authority to take enforcement action, including imposing monetary penalties. However, the Water Board would not be forced to impose penalties or take any other enforcement action. The mere fact that a CDO has been violated does not force the Water Board to take enforcement action.

I hope this answers your questions. If not, please let me know. I can be reached at (805) 542-4639 or [hpackard@waterboards.ca.gov](mailto:hpackard@waterboards.ca.gov). As you suggest, I am providing this letter to all CDO holders and settlement agreement signers.

Sincerely,



Harvey C. Packard  
Enforcement Staff

s:\seniors\shared\wdr\wdr facilities\san luis obispo co\los osos\enforcement\individual cdos\dewitt-molyan aug 09.doc

cc:  
CDO holders  
Settlement agreement signers  
Water Board members  
Water Board advisory staff