



SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT

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REPORT TO MEMBER AGENCIES October 22, 2012

Introduction:

The South San Luis Obispo County Sanitation District is an independent special district formed under the Health and Safety Code with a board of directors representing three member agencies; the **Cities of Arroyo Grande and Grover Beach and the Oceano Community Services District**. The District was formed in 1963 and serves approximately 39,000 residents with a capacity of 5.0 MGD. The District has one of the best safety records in the nation.

Overview of the October 3, 2012 ACL hearing and outcome:

In December of 2010 during a declared local and State emergency, the District experienced a significant flood event and electrical failure, resulting in its first spill in over 25 years. Subsequently the District was issued an Administrative Civil Liability (ACL) in June 2012, in the amount of \$1.38 million. For over a year, the District attempted to reach an equitable settlement with the State. However on September 7, 2012, a hearing was held by the RWQCB (Water Board) and on October 3, 2012, the District was fined \$1.10 million for a spill volume of 674,000 gallons. During the 17 hour hearing, the Water Board did not provide adequate legal foundation to rebut the District's evidence, nor did they provide precedence to support their analysis of the event's impacts.

The Appeal Process:

The District has a statutory right to present its case on appeal to the State Board. The District Board of Directors has taken action to begin this process. The petition to be submitted to the State Board focuses on the following:

- The Regional Board failed to meet their required "burden of proof" findings in this case.
- The fine imposed is unprecedented, without basis, and is inconsistent with the Water Board's own adopted policies.
- The decision is grossly inconsistent with other Administrative Civil Liability complaints issued throughout the State.
- The Regional Board did not accurately evaluate the District's ability to pay the imposed fine; an element that is required in hearings of this nature.

Decision of the Regional Board Regarding Spill volume and Penalty Factors:

It should be noted that the amount of the fines levied as well as other punitive measures are largely dependent on the Water Board's assessment of both "spill volume" and "penalty factors."

- Throughout the discussions with the Water Board Enforcement Division, and at the Regional Board Hearing, the District provided spill volume calculations using very precise hydraulic modeling to calculate the spill from each and every manhole as required by the State's reporting requirements.
- Conversely, Water Board Enforcement staff used an inaccurate, "approximation strategy" to calculate the overall spill volume.
- At the conclusion of the Water Board Hearing, a finding was made that a third party analysis approximating one of the original volumes reported by the District was "the most credible volume". This volume (674,000 gals) was 41% less than the Enforcement Division's estimate of 1,140,000 gals. The finding stated that the Water Board had "substantially overestimated" the spill volume.

"Penalty Factors"-- how they apply and why they were incorrect:

The State uses "penalty factors" as part of their enforcement policy to calculate a fine. These factors consider the impacts of a spill in relation to the surrounding community and the environment. Another consideration is the violator's past history of violations.

Applying a higher numerical value to a "penalty factor" can increase the fines proportionately. Concurrent with their decision to decrease the spill volume, the Water Board increased without justification, the "penalty factors" recommended by their staff. By so doing, the overall fine was maintained at well over a \$1.0 million. In challenging this action, the District presented evidence that was largely ignored by both the Enforcement Division and the Regional Board at the hearing. These factors are detailed below:

- This was the District's first spill in over 25 years, a record unmatched by others.
- The Water Board set a penalty factor at the highest possible level because the spill reached the lagoon and the ocean, supposedly with impact to health. This was not supported by any Water Board evidence.
- The beach was closed by State Parks for 4 days during, and after the spill due to dangerous surf and high volume of creek discharge. Public access to the beach was restricted.
- The County Health Department conducted ocean samplings soon after the beach was reopened and there was no evidence of any human health issues.
- The sewage to water ratio was less than one percent in the Oceano Lagoon and much less when combined with creek flow to the ocean.

- Flood and lagoon waters normally have high bacteria levels even without a spill.
- There was no demonstrated impact on wildlife or the habitat in and around the Oceano Lagoon or the Arroyo Grande Creek.
- The penalty factors assessed by the Water Board are grossly inconsistent with other spill cases and are not supported by case law. (These facts are detailed in the District's Appeal Petition).

Consideration of the District's Ability to Pay a \$1.1 Million Dollar Fine:

The Enforcement Division's own policy states that a justification for assigning penalty provisions to a violator is to ensure that there are no additional violations and that the violating agency enlists measures to provide for the future safe operation of the facility. However, the Enforcement Division has again opted to ignore its own policies and in fact is attempting to impede the District's planned infrastructure improvements.

- The fine imposed represents 1/3 of the District's total cash assets.
- These funds are committed to long range capital improvements.
- The fine imposed will jeopardize the District's future ability to safely operate and maintain the Sanitation Plant.

Actions Taken to Prevent a Reoccurrence:

The District has taken the following steps to prevent a reoccurrence of a spill:

- All electrical systems upgrades have been addressed. All electrical boxes have been cleaned and all critical conduits sealed.
- Standard operating procedures and emergency response plans have been reviewed, updated and training implemented.
- New staff leadership is in place.
- Pumping systems including the main influent pumps, emergency bypass pump and storm drain pumps have been serviced, checked and tested.
- Cooperative agreements with other agencies for emergency resources are in place.
- Capital project improvements are on-going.

Media Responses and Community Awareness:

The District has made a substantial effort to communicate with the community through public presentations, media releases and agency televised meetings. We will continue this practice for as long as the matter remains active.

It is unfortunate that some media and fringe media organizations have not presented an equitable, fact based accounting of this occurrence. The District will continue to provide accurate and factual information to our member agencies, our ratepayers, and the media, as this matter continues through the appeal process.

