

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 73-29

POLICY CONCERNING ACTIONS BY REGIONAL BOARDS
WHEN CONSIDERING WASTE DISCHARGE REQUIREMENTS AND
CEASE AND DESIST ORDERS FOR MUNICIPAL DISCHARGES

WHEREAS:

1. Chapter 5.5 of Division 7, California Water Code, will require many municipalities to upgrade wastewater treatment to secondary levels and water quality control plans may require the regional water quality control boards to adopt more stringent waste discharge requirements, thereby requiring municipalities to construct new or improved facilities to collect, treat, and dispose of wastewater.
2. It may be difficult for some municipalities to construct new or improved facilities without state and federal financial assistance.
3. The amount of state and federal funds may be insufficient to assist all municipalities in the construction of new or improved facilities.

THEREFORE BE IT RESOLVED:

It is the policy of the State Board that the regional boards shall:

1. Adhere to policy regarding the relationship between enforcement actions and the availability of federal financial assistance as outlined by letter dated June 5, 1973, from Mr. John R. Quarles, Jr., Acting Deputy Administrator, United States Environmental Protection Agency.
2. Include in any cease and desist order a condition, in accordance with Subchapter 9.1, Chapter 3, Title 23, California Administrative Code, prohibiting or restricting additional discharges to the municipal sewer system.
3. Include, where appropriate, within new waste discharge requirements a schedule of compliance which sets forth a staged program for the construction of major facilities for the collection, treatment, or disposal of wastewater.



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CERTIFICATION

The undersigned, Executive Officer of the State Water Resources Control Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 21, 1973.

Bill B. Dendy

Bill B. Dendy
Executive Officer



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

JUN 5 1973

Office of the
Administrator

Mr. W. W. Adams
Chairman, State Water
Resources Control Board
Room 1015, Resources Building
1416 Ninth Street
Sacramento, California 95814

Dear Mr. Adams:

I am responding to your letter of April 25, 1973, to Mr. Ruckelshaus. You asked two important questions relating to the application of the NPDES permit program to municipalities and I am glad to respond to those questions.

The first question was whether enforcement action should be commenced against municipalities when grant funds are unavailable to ensure compliance with NPDES permits. The basic issue raised by this question is whether the obligation of communities to go forward with needed construction of waste treatment plants is conditional upon receipt of Federal funds. Although the new 1972 water law does not make compliance with the statutory deadlines by municipalities directly contingent upon availability of Federal funds, it has been widely recognized that the increase of the Federal share to 75% of construction funds makes it highly unrealistic to attempt to force municipalities to finance such facilities without Federal funds. With respect to the specific question of initiating enforcement actions, such actions of course would not occur until actual violations of statutory deadlines or other permit requirements have occurred. Each case therefore depends on its own circumstances, and prosecutorial discretion does exist with respect to enforcement actions. We would expect that enforcement actions normally would not be initiated if violations can be shown to have resulted directly from lack of Federal funds, although such enforcement actions might be initiated where other factors have contributed to the delay.



You have also asked for confirmation of EPA staff statements that permits requiring upgraded treatment should be issued first to those municipalities which will be receiving grant funds. As a general matter this priority should be followed. Since new abatement programs are being developed in regard to those municipalities, it makes sense as a matter of administrative practice to concentrate first efforts for in-depth review of abatement programs on such cases. As quickly as possible permit processing should then move forward to develop permits for other municipal plants with a view for improving operation and maintenance of existing facilities as you indicated. If you have further questions or comments regarding these matters, please be in touch.

Sincerely yours,

John R. Quarles, Jr.
Acting Deputy Administrator

