

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the City of  
Half Moon Bay -- Petition to  
Review Cease and Desist Order  
of Regional Board

Order No. 71-11

On March 1, 1971, the State Water Resources Control Board received from the City of Half Moon Bay a petition to review and stay Order No. 71-11 of the California Regional Water Quality Control Board, San Francisco Bay Region. The City of Half Moon Bay was joined in its petition by the San Francisco, Peninsula, and Redwood Empire, Building Industry Association; the California Builders Council; and Mr. Gordon Blackley.

On March 4, 1971, this board undertook a review of the regional board action but denied the request for a stay of the order.

This board, having considered the record before the regional board, finds:

1. On March 19, 1959, the regional board adopted Resolution No. 301, prescribing discharge requirements for the City of Half Moon Bay sewage treatment plant.

2. The sewage treatment plant was built in 1959 with a design capacity of 0.30 mgd, which to date has not been expanded. It discharges chlorinated effluent to the ocean by a marine outfall terminating about 1,000 feet beyond the surf line.

3. Inspections of the beach adjacent to the city's outfall disclosed the presence of deposited solids of sewage origin on August 19, 1970, and October 21, 1970, in violation of the waste discharge requirements.

4. By letters dated April 15, 1968, May 24, 1968, May 31, 1968, August 1, 1969, and September 22, 1970, the regional board notified the city of the violation of requirements and requested immediate action to eliminate such violations.

5. Violations of requirements continued to be reported. Four out of six receiving water samples examined by the regional board exceeded the limit of 1,000 MPN/100 ml considered safe for areas of primary contact water use.

6. On January 19, 1971, the regional board notified the city that a cease and desist order hearing would be held on February 8, 1971, by a panel of the board. The notice stated

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that settleable solids, disinfection, and floating or deposited solids would be the specific requirements in question, and that the board would further consider restricting new connections to the city sewer system. A similar notice was mailed to the Peninsula Builders Exchange and was published in the Redwood City Tribune on January 21, 22, and 23, 1971. Contrary to the city's contention, the notice was sufficient to inform the city and other affected persons of the scope of the matters to be considered and determined.

7. On February 8, 1971, the regional board panel conducted a hearing pursuant to the foregoing notice. The regional board's staff presented as evidence a list of discharge violations during the period January 1, 1970, through January 21, 1971. Disinfection requirements were violated on 121 days, settleable solids requirements were violated on 111 days, and requirements concerning floating or deposited solids of sewage origin were violated on two days.

8. At the hearing the regional board executive officer testified that census figures list a present population of 4,038 for the area serviced by the city, and that the city reported average monthly sewage flows during the months of October, November and December 1970 of 0.34, 0.35 and 0.45 mgd, respectively. The regional board executive officer testified that additional connections to the sewer system would result in further unreasonable impairment of water quality by increasing the degree of violations of requirements (RT 9-10).

9. At the hearing, the city presented a plan to improve its existing treatment facilities by construction of a waste stabilization pond on plant property which should improve effluent quality to the degree that violations for settleable solids and deposited solids of sewage origin would cease to occur. A witness for the city testified that the city flow meter had been recalibrated on February 6, 1971, and was found to be recording about 0.12 mgd high.

10. After the hearing the panel reported its proposed decision and order to the regional board. On February 25, 1971, the regional board adopted the proposed decision and order of the hearing panel as Order No. 71-11, ordering the City of Half Moon Bay to cease and desist violating the waste discharge requirements prescribed in Resolution No. 301, and prohibiting additional discharges to the sewer system of the city by dischargers not discharging to the system prior to February 25, 1971, except those who had commenced construction or obtained building permits prior to that date.

11. The evidence received at the hearing fully supports the findings in paragraphs 7 and 8 of Order No. 71-11 that the city was violating discharge requirements and that any increase in the discharge of waste will further unreasonably impair water quality. The action of the regional board in issuing the order was appropriate and proper.

12. Contrary to the petitioners' contention, the city was given a full opportunity to call and examine witnesses and to cross-examine members of the regional board's staff and other persons who testified, with the exception that evidence concerning alleged hardship that would result from a prohibition on additional discharges to the city's sewer system was excluded.

13. There is no specific statutory basis for considering evidence of "hardship" either to individuals or to the community at large as cause for not prohibiting additional discharges to a community sewer system where such additional discharges would further adversely affect water quality. Whether hardship should be considered and, if so, the conditions under which it should be considered, are matters within the sound discretion of the regional board in conformity with regulations adopted by the state board to implement provisions of the Water Code. This board has adopted Section 2244(f) of Title 23, California Administrative Code, which recognizes that "special circumstances" resulting in "extreme public hardship or a public health hazard" may justify exclusions from prohibitions of additional discharges. This section was not intended to mean that economic loss to a community as a whole or to city government is cause for not prohibiting additional discharges, because such loss is the rule rather than the exception and cannot outweigh the need to prevent increased water pollution, which is the basic reason for the prohibition.

Section 2244(f) means that a regional board may allow an exception to an order prohibiting additional discharges to a community sewer system if by reason of special circumstances, enforcement of the order in a particular situation would result in extreme public hardship or a public health hazard. It follows that evidence of hardship is not relevant to the issue whether additional discharges should be prohibited but should be presented to the regional board in support of a request for exclusion from the prohibition in an individual case. The regional board may, in its discretion, act on such requests at the time it adopts an order prohibiting discharges or it may postpone action until after it has adopted the order.

14. The regional board meeting on February 25 was not a hearing and the board was under no obligation to receive additional evidence at that time. (See Water Code Sec. 13302(b).)

15. Evidence at the hearing of repeated violations of requirements over a long period of time continuing to within a few days of the hearing, without a satisfactory showing that adequate corrective measures had been taken to assure that violations would not again occur, justified issuance of the cease and desist order at the meeting on February 25 even though the city offered to present evidence at the meeting that requirements were not then being violated. In light of the record of past violations the time interval between the hearing and the regional board meeting was insufficient for the board to be

assured that violations would not recur. Such evidence can be heard and considered by the regional board after sufficient time has elapsed to demonstrate that corrective measures have resulted in permanent compliance with all requirements. In the meantime, the cease and desist order will not prejudice the city because the order can be enforced only by appropriate court action which the executive officer is authorized to initiate only in the event of further violations.

16. The record does not support the allegations of the petition that board members considered as evidence matters not presented at the hearing or that the regional board made its decision before any evidence was presented.

17. Petitioners allege that the city was refused a copy of the hearing panel report prior to "the hearing and action of February 25, 1971." (Petition, paragraph 8.) A copy of the hearing panel's proposed decision and order should be supplied to all parties who appeared at the hearing and requested a copy (Water Code Sec. 13302(b)). The hearing record does not disclose that petitioners requested a copy of the proposed decision and order of the panel. In any event, petitioners suffered no prejudice by reason of not having received a copy prior to the board meeting on February 25.

18. The petition includes a number of legal contentions, including the following:

(a) Waste discharge requirements issued under the old law became invalid on January 1, 1970, when the Porter-Cologne Act became effective.

This board agrees with an opinion of the Legislative Counsel that the Porter-Cologne Act did not repeal waste discharge requirements issued under the prior law and that such requirements remain in effect and are enforceable.

(b) Former Section 13054 of the Water Code "does not pertain to the City" and was repealed on January 1, 1970.

This section expressly authorized a regional board to prescribe requirements for all waste discharges except those into a community sewer system and clearly applied to the city. Repeal of this section did not invalidate the requirements.

(c) The order is invalid in unlawfully delegating to the regional board executive officer the power and authority to determine when and if certain provisions of the order should be judicially enforced.

The order directs the executive officer to request the Attorney General to take appropriate enforcement action if the discharger fails to comply with the order. Water Code Section 13223 authorizes a regional board to delegate any of its powers and duties to its executive officer with certain exceptions. The exceptions do not include reference of a cease and desist order to the Attorney General for enforcement action.

(d) The order prescribes the manner in which compliance may be had in violation of Water Code Section 13260.

Order No. 71-11 makes no reference to "the manner in which compliance may be had." It merely directs the city to cease violations of the requirements and to comply forthwith, prohibits additional discharges, and requires the city to provide reports of progress toward compliance.

19. Other legal contentions contained in the petition that the regional board's order is contrary to certain sections of the Health and Safety Code, violates the city's constitutional rights as to municipal affairs, violates constitutional mandates against impairing the obligations of contracts, and that the order is vague and fails to properly state the matters sought to be enforced, have no merit.

20. An organization called Local Initiative for Environment submitted a written statement to this board strongly supporting the action of the regional board except that part of the order which excludes from the prohibition on additional discharges to the sewer system new construction for which permits had been issued prior to the date of the order. The regional board acted properly in accordance with 23 Cal. Adm. Code 2244-(f)(1), which reads:

(f) The following should be excluded from prohibitions and restrictions:

(1) Buildings under construction or with permits already issued at time prohibition or restriction is imposed.

IT IS HEREBY ORDERED that Order No. 71-11 of the California Regional Water Quality Control Board, San Francisco Bay Region, is affirmed and the matter is referred back to the regional board for such action as it deems appropriate concerning requests for exclusion from the order prohibiting additional discharges to the sewer system in accordance with Section 2244 of Title 23, California Administrative Code.

This order is without prejudice to the executive officer of the regional board exercising his authority to request the Attorney General to take appropriate enforcement action against the City of Half Moon Bay if the city fails to comply with the provisions of Order No. 71-11.

Adopted as the order of the State Water Resources Control Board at a meeting duly called and held at Sacramento, California.

Dated: April 5, 1971.

KERRY W. MULLIGAN  
Kerry W. Mulligan, Chairman

E. F. DIBBLE  
E. F. Dibble, Vice Chairman

NORMAN B. HUME  
Norman B. Hume, Member

RONALD B. ROBIE  
Ronald B. Robie, Member

W. W. ADAMS  
W. W. Adams, Member

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W. W. ADAMS, *Member*  
JEROME B. GILBERT, *Executive Officer*

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NOTICE OF  
SPECIAL MEETING

NOTICE IS HEREBY GIVEN that on April 5, 1971, the State Water Resources Control Board will hold a special meeting to act on the petition of the City of Half Moon Bay to review the cease and desist order of the California Regional Water Quality Control Board, San Francisco Bay Region. The State Board will meet at 2 p.m. in the Resources Auditorium, Main Floor, 1416 Ninth Street, Sacramento, California.

The board action will be based upon the record before the regional board and any written comments received by the Board on or before March 25, 1971. No additional evidence will be received.

Dated: March 24, 1971.

STATE WATER RESOURCES CONTROL BOARD

Jerome B. Gilbert  
Executive Officer