STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of the City of Santa Barbara for Review of Cease and Desist Order No. 72-4, Amended by the California Regional Water Quality Control Board, Central Coast Region, on May 18, 1973	Order No. WQ 73-19

BY THE BOARD

On May 18, 1973, the California Regional Water Quality Control Board, Central Coast Region (Regional Board), amended Order No. 72-4. The amendment reimposed a prohibition on additional discharges to the sewer system of the City of Santa Barbara (Petitioner), subject to certain exclusions.

On May 23, 1973, Petitioner filed its petition with the State Water Resources Control Board (State Board) requesting that the State Board review the action of the Regional Board in amending Order 72-4 and that the action of the Regional Board be rescinded. Petitioner advances six contentions in support of its petition, all of which are hereafter considered.

I. BACKGROUND

Order No. 72-4 was originally adopted on June 9, 1972, by the Regional Board. As originally adopted, Order No. 72-4 contained a prohibition on additional discharges to the sewer system of Petitioner. On July 10, 1972, Petitioner filed a petition with the State Board requesting review of the action of the Regional Board in adopting Order No. 72-4. The State Board did review the action of the Regional Board, and on September 7, 1972, the State Board determined that the action of the Regional Board was appropriate and proper (State Board Order No. 72-18).

On December 8, 1972, after an extensive hearing, the Regional Board modified Order No. 72-4 to remove the prohibition against additional discharges to the sewer system of Petitioner.

On May 18, 1973, a further hearing was held and, as a result of the evidence introduced, the Regional Board reimposed the prohibition on additional discharges as a part of Order No. 72-4.

II. CONTENTIONS OF PETITIONER AND FINDINGS

The contentions of Petitioner and our findings relative thereto are as follows:

1. Sufficiency of the Evidence. Petitioner contends that the evidence of events and circumstances which occurred between December 8, 1972, and May 18, 1973, was insufficient to justify reimposition of the prohibition against additional discharges. The contention is made in general terms, without further elaboration by the Petitioner.

Our review of the record satisfies us that the evidence introduced before the Regional Board was sufficient to justify reimposition of the prohibition against additional discharges. The evidence introduced included evidence on the following matters:

(a) Current waste discharge requirements applicable to Petitioner require that settleable solids in the effluent from Petitioner's plant shall not exceed 0.3 ml/l in 80 percent of samples taken, and that no single sample shall exceed 1.0 ml/l settleable solids. Between December 9, 1972, and April 16, 1973, some 113 samples were taken by

Petitioner on 112 different days, two samples having been taken on January 8, 1973. Of the 113 samples taken, only five (4.4%) were 0.3 ml/l settleable solids, or less. Basically, during this period, instead of meeting the 0.3 ml/l settleable solids parameter in 80 percent of samples, as required, Petitioner was meeting this parameter in only 4.4 percent of samples.

(b) Of the 113 samples referred to, 49 samples (43%) exceeded 1.0 ml/l settleable solids. Violations of the 1.0 ml/l settleable solids parameter were occurring with increasing frequency. Ten such violations occurred between December 9, 1972, and January 31, 1973. Thirty-nine such violations occurred between February 1, 1973, and April 16, 1973.

(c) Between December 9, 1972, and April 16, 1973, no sample met the 0.3 ml/l settleable solids parameter after February 21, 1973.

(d) On March 9, 1973, clarifier No. 2 at Petitioner's plant became inoperable due to electrical and mechanical failures. This clarifier was not put back into service until March 16, 1973. During the period when this clarifier was inoperative, seven settleable solids samples were taken. Four of these samples exceeded 10.0 ml/l settleable solids. The average for all samples during this period was 8.6 ml/l settleable solids.

(e) On March 27, 1973, clarifier No. 1 failed. This clarifier was replaced in service on the same day or early the following day.

(f) There was expert testimony in a variety of forms that the treatment plant was badly deteriorated, inadequately maintained, and hydraulically overloaded during peak flow periods. The evidence included not only expert opinion and factual observations of Regional Board staff, but also a plant survey conducted by the Environmental Protection Agency of the United States (EPA).

(g) There was expert opinion that further plant malfunction could be anticipated due to the deterioration existing at the plant.

(h) There was evidence of degradation in the receiving waters due to deposition of settleable solids, that water quality and beneficial uses have been impaired due to deposition of settleable solids of sewage origin, and that continuing deposits of settleable solids from Petitioner's outfall will increase the degree of impairment.

The evidence is, in our estimation, more than sufficient to justify the action of the Regional Board. It demonstrates a continuing and consistent violation of waste discharge requirements by Petitioner, lack of adequate plant maintenance leading to plant malfunction and gross violations of requirements, impairment of water quality and beneficial uses in receiving waters, a badly deteriorated plant presently

incapable of adequately and properly treating existing flows, and probable increase of impairment of water quality and beneficial uses due to the inadequacy of Petitioner's plant.

In short, the evidence indicates "an existing or threatened violation of waste discharge requirements in the operation of a community sewer system" as required by Water Code Section 13301, together with such other circumstances as would justify reimposition of a prohibition against additional discharges into the sewer system.

2. Weight of Evidence. Three of Petitioner's contentions relate primarily to the weight to be given to certain evidence before the Regional Board. These contentions and our findings relative thereto are as follows:

(a) Petitioner contends that the evidence demonstrates that the Petitioner did all things reasonable to improve and did in fact improve the quality of its discharge between December 8, 1972, and May 18, 1973. There was evidence before the Regional Board that Petitioner had undertaken some remedial action to improve its facilities and their operation between December 8, 1972, and May 18, 1973, and that further remedial action was contemplated by the Petitioner. Insofar as the action of a regional board in determining whether or not a prohibition on additional discharges should be imposed is discretionary, this

evidence is relevant, and such evidence was considered in this particular matter by the Regional Board. On the other hand, there was substantial conflicting evidence indicating that the Petitioner had failed to undertake a large number of actions which would serve to improve its facilities and their operation. The EPA survey and report itself indicates a number of improvements which could be made to the facilities of Petitioner and a large number of deficiencies in plant facilities and operation which need correction. More fundamentally, perhaps, the evidence appears to demonstrate conclusively that the remedial action undertaken by Petitioner has in fact been largely ineffective.

(b) Petitioner contends that the evidence demonstrates that the actual volume of settleable solids being discharged (except during periods of plant malfunction) meets requirements, but that measurement thereof is in some cases higher than requirements due to presence of a fibrous material in the discharge which distorts the measurement of settleable solids. We must respond that the evidence does not so demonstrate, at least to the extent contended by Petitioner. The EPA survey and report indicates that, during their investigation, the presence of a fibrous material in the discharge was noted, and

that one effect of the fiber is that it would yield settleable solids results which would be higher than would result without the fiber. Petitioner draws from this evidence the inference that all settleable solids measurements are affected by the presence of the fiber, and the further inference that, without the presence of the fiber, measurements of settleable solids would be within the limits of waste discharge requirements. There is no evidence which would require these inferences to be drawn. There is substantial and convincing evidence that Petitioner is, in fact, violating settleable solids requirements under standard methods of measurements. Measurements demonstrating violation have been performed not only by the staff of the Regional Board and EPA, but also by the Petitioner itself under its self-monitoring program.

(c) Petitioner contends that the evidence related to gross violations occurring during the period from March 9 to March 16, 1973, established that these violations were due to causes beyond the control of Petitioner, i.e., a short circuit which could not have been reasonably anticipated by the Petitioner and that this malfunction was not due to negligence or wilful misconduct by the Petitioner. This aspect of the matter again involves the weight of conflicting evidence, for there was certainly other evidence from which it could be

inferred that Petitioner had allowed its facilities to deteriorate over a long period of time to the point where plant malfunction can and should be anticipated. We ourselves believe that failure of a discharger to properly maintain, repair and operate a treatment facility is negligence, and, under some circumstances, may be considered to be wilful also. In any event, the question of whether the violations involved were negligent or intentional is not a basic issue involved in determining the appropriateness of Regional Board action in this matter. Water Code Section 13301 does not relate a cease and desist order, or a prohibition on additional discharges, to the question of whether a discharger's violations of waste discharge requirements are negligent or wilful. Neither negligent nor intentional violation of requirements is required under Section 13301.

Petitioner's contentions relate to isolated areas of evidence which in some cases pertain to secondary or peripheral issues before the Regional Board. The essential issues involved in this matter are whether there is a violation or threatened violation of waste discharge requirements by Petitioner, whether the violation impairs or threatens impairment of water quality, and whether there is liklihood of further or increased impairment of water quality by continued violation of waste discharge requirements. The evidence should be viewed as a whole in determining these issues. The Regional Board concluded upon substantial evidence that these issues should be determined adversely to Petitioner. After our review, we concur.

3. Waste Discharge Requirements and Alleged Punitive Action. Petitioner contends that the waste discharge requirements applicable to Petitioner are unreasonable and unnecessary to the protection of beneficial uses and that

the action of the Regional Board in reimposing the prohibition was punitive.

The reasonableness of waste discharge requirements was not in issue before the Regional Board on May 18, 1973, and it is not in issue here. There was no evidence before the Regional Board on May 18, 1973, to sustain the position of Petitioner on this point.

We find nothing in the record before us which would in any way indicate that the action of the Regional Board was used to punish Petitioner for past failure to comply with waste discharge requirements. The allegation is, in our estimation, utterly devoid of merit.

III. CONCLUSIONS

After review of the record and the contentions of Petitioner, the State Board concludes as follows:

1. The action of the Regional Board in amending Order No. 72-4 on May 18, 1973, to reimpose a prohibition on additional discharges to the sewer system of Petitioner was supported by sufficient and substantial evidence.

2. Such action of the Regional Board was appropriate and proper.

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IT IS HEREBY ORDERED that the petition of the City of Santa Barbara be, and it is, denied.

Dated: August 2, 1973

W. W. Adams, Chairman

Ronald B. Robie, Vice Chairman

Roy E. Dodson, Member

Mrs. Carl H. (Jean) Auer, Member

W. Don Maughan, Member