

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Review of Action
of the California Regional Water
Quality Control Board, North Coast
Region, Regarding Adoption of Time
Schedule for Pacific Lumber Company,
Order No. 74-207.

Order No. WQ 74-25

BY THE BOARD:

On November 21, 1974, the State Water Resources Control Board (State Board) by Resolution No. 74-73 determined to review, on its own motion, the action of the California Regional Water Quality Control Board, North Coast Region (Regional Board), relative to adoption of Order No. 74-207. This review is made pursuant to Water Code Section 13320.

I. BACKGROUND

On February 28, 1973, the Regional Board adopted Order No. 73-15 (NPDES Permit No. CA 0006017) for Pacific Lumber Company (Pacific Lumber). Order No. 73-15 was effective immediately and set waste discharge requirements for Pacific Lumber at its Scotia Mill complex.

On August 21, 1974, the Environmental Protection Agency (EPA) determined that Pacific Lumber had violated the requirements of Order No. 73-15 and issued a finding of violation pursuant to Section 309 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1319), hereafter referred to as the Federal Act. The violations alleged may be summarized as follows:

1. Violation of effluent settleable solids limitations.
2. Violations of effluent suspended solids limitations.
3. Violation of effluent biochemical oxygen demand (BOD) limitations.
4. Violation of effluent coliform organism concentrations.
5. Failure to submit required monitoring reports to EPA.

The finding of violation advised that EPA would take direct enforcement action under Section 309 if appropriate enforcement action was not taken by state agencies.

The relevant chronology of actions which occurred thereafter may be summarized as follows:

1. On August 27, 1974, Pacific Lumber, through its consultants, acknowledged that the violations alleged had occurred, set forth a detailed explanation of the attempts to meet requirements and the reasons for failure to meet requirements, and requested a joint meeting between EPA, the staff of the Regional Board, and Pacific Lumber to resolve the situation.
2. On September 10, 1974, EPA requested a meeting with the staff of the Regional Board on September 12, 1974.

3. On September 12, 1974, the staff of the Regional Board met with EPA to discuss appropriate enforcement action against Pacific Lumber. The staff of the Regional Board proposed to issue a time schedule for compliance with requirements under Water Code Section 13300.
4. On September 13, 1974, EPA orally advised the Regional Board staff that issuance of a time schedule for compliance would not be adequate enforcement action. EPA indicated that in their opinion adequate enforcement action would involve issuance of a cease and desist order pursuant to Water Code Section 13301, injunctive relief, or civil monetary damages. EPA subsequently confirmed its position by letter of September 26, 1974.
5. On October 30, 1974, the Regional Board held a hearing respecting the violations of requirements by Pacific Lumber and the appropriate enforcement action to be undertaken as a result of the violations. As a result of the evidence introduced at the hearing, the Regional Board determined that imposition of a time schedule for compliance under Water Code Section 13300 would be the appropriate action. Accordingly, the Regional Board adopted Order No. 74-207, setting forth a time schedule for compliance with waste discharge requirements by Pacific Lumber.

II. FINDINGS

Inasmuch as this matter represents the first contention by EPA in California that a Regional Board has failed to take appropriate enforcement action against violations of an NPDES permit, we have reviewed the records of the Regional Board with the greatest of care. Our findings are as follows:

1. The permit issued to Pacific Lumber Company (Order No. 73-15) was one of the first NPDES permits issued in California.
2. At the time of adoption of this permit, the Regional Board and its staff mistakenly believed that an NPDES permit could not provide a time schedule for compliance with waste discharge requirements. At the same time, the Regional Board and its staff were aware that Pacific Lumber could not comply with the waste discharge requirements of the NPDES permit without a reasonable time to install necessary facilities to assure such compliance.
3. The consequence of the foregoing circumstances was the adoption of an NPDES permit which placed Pacific Lumber in immediate violation of requirements without any reasonable opportunity to meet these requirements.
4. Basic concepts of fairness and due process require that an existing discharger of pollutants be

afforded a reasonable opportunity to meet waste discharge requirements, unless the circumstances are such that an immediate prohibition of discharge is warranted. Pacific Lumber should have received a reasonable amount of time to meet the requirements of Order No. 73-15.


5. The record indicates that Pacific Lumber has proceeded to toward compliance with requirements with reasonable diligence and in good faith (See Exhibit A which sets forth a summary of the actions of Pacific Lumber since adoption of the NPDES permit involved).
6. The time schedule adopted by the Regional Board in Order No. 74-207 is reasonable and requires Pacific Lumber to meet the waste discharge requirements of Order No. 73-15 at the earliest practicable time (See Exhibit A).
7. We believe that the action of the Regional Board in this particular case was appropriate and proper. Order No. 74-207 merely provides a schedule of compliance which should have been provided in Order No. 73-15.

III. CONCLUSIONS AND ORDER


Having considered the matter before us, we conclude that the action of the Regional Board in adopting Order No. 74-207 was appropriate and proper.

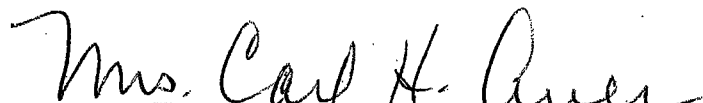
IT IS HEREBY ORDERED that the action of the Regional Board in adoption of Order No. 74-207 be confirmed.

Dated: December 19, 1974


W. W. Adams, Chairman

"no" *
Ronald B. Robie, Vice Chairman


Roy E. Dodson, Member


Mrs. Carl H. (Jean) Auer, Member


W. Don Maughan, Member

*See Dissenting Opinion (Attached)

EXHIBIT A

A review of the record indicates that at the time of consideration of the NPDES permit by the Regional Board there were four discharges by Pacific Lumber. One of these discharges, the discharge of glue residue, was eliminated prior to issuance of the NPDES permit. The status of the remaining three discharges, the progress of Pacific Lumber to date, and the effect of Order No. 74-207 may be summarized as follows:

Status at Adoption of Permit	Present Status	Required By Order No. 74-207
A. <u>Discharge No. 1</u>		
1. Storm drain water	1. No change	No change
2. Industrial waste from equipment repair building	2. Eliminated	
3. Cleaning water from fish pond	3. Eliminated	
B. <u>Discharge No. 2</u>		
1. Planning mill equipment glue wash-down water	1. Eliminated	
2. Debarker conveyor sump overflow water	2. Eliminated	
3. Boiler water treatment filter wash-down water	3. No change	Eliminate by April 30, 1975
4. Cooling water	4. No change	Eliminate by April 30, 1975

Status at Adoption of Permit	Present Status	Required By Order No. 74-207
C. <u>Discharge No. 3</u>		
1. Water from log pond overflow, including:		Conform to permit requirements by September 30, 1975
(a) Log deck runoff	(a) No material change	
(b) Process water	(b) No material change	
(c) Wash-down water	(c) No material change	
(d) Effluent from town's sewage treatment plant	(d) Repair work to plant has reduced coliform count	

Pacific Lumber is presently working on a plan to clean up discharge No. 3. Their plan includes a bypass system for storm runoff. This would almost eliminate discharge from the holding pond during the dry months and minimize discharge during the rainy season. The company is also ordering aerators for the log pond and sewage treatment/debarker effluent ponds. They are now installing flow monitoring equipment.

Part of the problem with this particular discharger was the failure of Pacific Lumber to send monitoring reports to EPA. Monitoring reports were at all times forwarded to the Regional Board. The consultants for Pacific Lumber apparently thought the Regional Board was forwarding their reports to the EPA. This problem has been corrected.

DISSENT OF BOARD VICE CHAIRMAN ROBIE

I respectfully dissent from the Board's decision.

Regardless of the State Board's view at this time that a time schedule should have been incorporated in Order No. 73-15 when it was adopted by the Regional Board in February 1973 (Finding 4), the fact remains that the requirements were effective immediately and the discharger was fully aware of the fact. As a matter of State and Regional Board practice, orders effective "immediately" or "forthwith" carry an implied condition that the actual time involved be "reasonable". The discharger accepted the requirements and did not request State Board review of them. The discharger then failed to comply with the requirements and to provide monitoring reports as required.

With this record of noncompliance before it, the Regional Board should have issued a Cease and Desist Order, the terms of which are directly enforceable by reference to the Attorney General for Judicial action. Instead a time schedule was provided. If this schedule is not met, an additional Regional Board hearing and Board action will be necessary to set in motion judicial relief.

The policy of the Porter-Cologne Act could most appropriately be complied with through issuance of a Cease and Desist Order incorporating a time schedule granting a reasonable period for the discharger to effect compliance. The step followed by the Regional Board was unnecessary. Therefore, in my opinion, the action of the Regional Board in adopting Order No. 74-207 was inappropriate and improper and should not be confirmed.



Ronald B. Robie
Vice Chairman