STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of the Union Oil Company of California for Review of Order No. 74-152 (NPDES Permit No. CA0005053) of the California Regional Water Quality Control Board, San Francisco Bay Region.	Order No. WQ 75-16

BY THE BOARD:

The Union Oil Company of California (petitioner) has submitted a petition to the State Water Resources Control Board (State Board) requesting a review of Order No. 74-152 (NPDES Permit No. CA0005053) adopted by the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Board) on November 19, 1974. Order No. 74-152 prescribes waste discharge requirements for petitioner's San Francisco refinery located at Rodeo, California.

BACKGROUND

Petitioner operates its San Francisco refinery at Rodeo, California. Approximately 10 million gallons per day (mgd) of once through cooling water and approximately 35 mgd of mixed wastewater is discharged into San Pablo Bay. The wastes result from the refining of approximately 65,000 barrels/day of crude oil and approximately 35,000 barrels/day of pressure distillate and gas oil.

On November 19, 1974, the San Francisco Bay Regional Board adopted Order No. 74-152 establishing waste discharge requirements for petitioner. The requirements were based on a Corps of Engineer Permit Application dated June 15, 1971, the Interim Water Quality Control Plan for the San Francisco Bay Basin and effluent limitations for the lube subcategory of refineries.

CONTENTION AND FINDINGS

Contention

Petitioner contends that the waste discharge requirements adopted by the Regional Board should contain a provision to provide that noncompliance due to plant upset, breakdown or malfunction, plant start up and shutdown or other problems not within the reasonable control of the discharger shall not constitute a violation of the permit.

Analysis

The petitioner correctly notes that that effluent guidelines for the Petroleum Refining Point Source Category are based upon normal operations and that any consideration of other than normal operations should be covered in the requirements. It is apparent from the extensive discussion contained in the

hearing record that the Regional Board did consider "other than normal operations". In Order No. 74-152, provision D.4 specifies reporting procedures for periods of noncompliance and provision D.8 requires submission of a contingency plan for operation of the treatment facility during upset conditions. The Regional Board obviously was aware of the possibility of noncompliance with permit terms during periods of upset conditions.

Petitioner cites Decision of the Assistant Administrator of EPA for Enforcement and General Counsel on Matters of Law dated September 5, 1974, in support of its position. However, this Decision only finds that the Administrator has the discretion, after opportunity for hearing, to provide upset condition provisions in permits issued by EPA. It does not require such provisions. We agree that in the NPDES permit program administered by the State, the Regional Board has a similar discretion. In this case, the Regional Board chose not to include such a condition in Order No. 74-152.

EPA, Region X, issued an Initial Decision on April 8, 1975, in Case No. X-74-6 regarding the petition of Mobil Oil Corporation. Mobil contended that their permit for a petroleum production offshore platform failed to contain a provision to accommodate upsets in the treatment facility. While this is only an Initial Decision, the Regional Administrator did find that the permit should not be so changed or amended and that

to do so would defeat the purpose of the Act, "to restore and maintain the chemical, physical and biological integrity of the Nation's waters".

Petitioner contends that permit terms must contain upset condition provisions because of analagous precedents under Section 111 of the Clean Air Act, "Standards of Performance for Stationary Sources". It cites Portland Cement Assoc. v. Ruckleshaus, 486 F.2d 375, and Essex Chemical Corp. v. Ruckleshaus, 486 F.2d 427, which generally held that upset condition provisions are necessary to preserve the reasonableness of standards under Section 111 of the Clean Air Act.

We believe that the nature of control facilities used in wastewater treatment is technically distinguishable from facilities relating to control of air quality from stationary sources. The Regional Administrator in the Mobil Initial Decision, supra, noted this distinction and stated that the discharger could demonstrate circumstances which may justify a noncomplying discharge in enforcement actions, if necessary. Further, and more importantly, the Federal Water Pollution Control Act (P.L. 92-500) allows more stringent state control provisions than the Clean Air Act. Section 510 of the Federal Water Pollution Control Act grants to states the right to develop more stringent standards than promulgated by EPA. Section 510 has no counterpart in the Clean Air Act language construed in the clean air cases. It

is obviously the intent of Congress that states be in the vanguard of the national attack on water pollution. (See California v. EPA et al., U. S. Court of Appeals (9th Circuit) No. 73-2466.) Consequently, we find that the clean air cases are not analagous to the present case on upset condition provisions.

Petitioner argues that the failure to provide further allowances for upset conditions is unreasonable and denies them due process of law. However, petitioner notes in their March 17, 1975, additional comments and arguments regarding Order No. 74-152, at page 3, that the upset condition which it requests would not divest the Regional Board of its power to review each situation and determine if enforcement action is required. Petitioner apparently envisions the value of the upset condition provision to be an available means whereby the Regional Board can determine that a violation of requirements was unavoidable and that enforcement action should not be taken. The violation then, petitioner argues, would not subject petitioner to unwarranted citizen or agency action. This type of argument is devoid of merit. It presupposes that citizens or other agencies will institute unwarranted actions regardless of relevant facts and circumstances. We do not believe that this will be the case. This argument addresses itself not really to impropriety of Order No. 74-152, but rather to alleged improper and unwarranted action of other parties and agencies which are not within the control of the Regional Board.

We recognize that influent quality changes, equipment malfunction, facility start up and shut down or other circumstances may sometimes result in the effluent exceeding permit limitations despite the exercise of reasonable care by petitioner. In these cases the petitioner may come forward to demonstrate to the Regional Board that such circumstances exist. The Regional Board will consider these factors in exercising their discretionary authority in determining noncompliance and for enforcement purposes. Regional Board enforcement actions must be reasonably based pursuant to public hearing and due process protections. Limitless facts and possibilities exist regarding upset conditions and each case must be reviewed on its own merits. To limit this discretion of the Regional Board would be to impair seriously the purpose and enforcement provisions of the Federal Water Pollution Control Act. We find this contention to be without merit.

CONCLUSION AND ORDER

Having considered the contentions of the petitioner and the records of the Regional Board, we conclude that the action of the Regional Board in adopting Order No. 74-152 was appropriate and proper.

IT IS HEREBY ORDERED that the petition for review of Order No. 74-152 is denied.

Dated: June 19, 1975

/s/ W. W. Adams
W. W. Adams, Chairman

ABSENT
W. Don Maughan, Vice Chairman

/s/ Roy E. Dodson
Roy E. Dodson, Member

/s/ Mrs. Carl H. Auer
Mrs. Carl H. (Jean) Auer, Member