STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of Union Oil Company for Review of Order No. 75-8 (NPDES Permit No. CA0053856) of the California Regional Water Quality Control Board, Los Angeles Region	)	Order No. WQ 75-17

BY THE BOARD:

On February 27, 1975, Union Oil Company (petitioner) petitioned the State Water Resources Control Board (State Board) for review of Order No. 75-8 (NPDES Permit No. CA0053856) of the California Regional Water Quality Control Board, Los Angeles Region (Regional Board). Order No. 75-8 was adopted on January 27, 1975, and prescribed waste discharge requirements for the City of Los Angeles' Terminal Island Wastewater Treatment Plant.

I. BACKGROUND

On December 16, 1974, the Regional Board adopted, "without prejudice", Order No. 74-512 which prescribed waste discharge requirements for the City of Los Angeles' Terminal Island Wastewater Treatment Plant. Because of several unresolved issues, the Regional Board directed its staff to conduct further discussions with the discharger, investigate the entire situation more fully, and bring the matter back to the Regional Board at the earliest possible date. On January 27, 1975, the matter was again before the Regional Board at which time the Regional Board adopted Order No. 75-8.

Union Oil Company is the owner and operator of a petroleum refinery located in Wilmington, California, which is scheduled to commence discharge of its process wastewater to the Terminal Island Wastewater Treatment Plant upon completion of new facilities which are currently under construction. Union Oil Company, as a future contributor to the City of Los Angeles' sewerage system, is concerned with the type and nature of pretreatment standards which will be imposed upon contributing industries.

II. CONTENTIONS AND FINDINGS

The petitioner generally alleges that the action of the Regional Board in adopting Order No. 75-8 was inappropriate and improper because the action was premature in that the Administrator of the Environmental Protection Agency (EPA) had not promulgated applicable pretreatment standards. Petitioner contends that it was an abuse of discretion for the Regional Board not to include in Order No. 75-8 a complete listing of "compatible pollutants", i.e., those pollutants which will be significantly removed by the treatment process at the Terminal Island Treatment Plant. More specifically, the contentions of the petitioner and our findings relative thereto are as follows:

1. Contention: It was an abuse of discretion for the Regional Board to issue waste discharge requirements for the Terminal Island Plant while the Administrator of EPA is in noncompliance with the requirements of Sections 304(f) and 307(b) of the Federal Water Pollution Control Act, hereafter the Act. (Public Law 92-500; 33 U.S.C. Section 1251 et seq.). Section 304(f)

and 307(b) of the Act require the Administrator to promulgate pretreatment standards applicable to identified point sources. The petitioner alleges that the Regional Board abused its discretion by adopting waste discharge requirements naming only four "compatible pollutants" prior to the Administrator's promulgation of pretreatment standards under Sections 304(f) and 307(b)(3) for the petroleum refining point source category.

Finding: Section 402 of the Act requires that each discharge to surface waters be placed under the control of an NPDES permit. Section 402(k) of the Act, in effect, provides that until December 31, 1974, in any case where an NPDES permit for discharge has been applied for pursuant to Section 402, but final administrative disposition of such application has not been made, such discharge shall not be deemed in violation of certain sections of the Act unless failure to issue the NPDES permit is the fault of the applicant for the permit. In this matter, unless a permit was adopted by December 31, 1974, the applicant for the permit, the City of Los Angeles, would have become subject to enforcement provisions of the Act, including citizen's suits.

It is regrettable that the Administrator of EPA was unable to comply with the legislative mandate contained in Section 307(b)(1) of the Act requiring the promulgation of pretreatment standards for categories of point sources. The failure to develop pretreatment standards results in an NPDES permit requiring compliance with as yet undefined standards. It also means that municipal dischargers and contributing industries must be subjected to NPDES permits without complete knowledge of the meaning of all permit terms.

However, Section 402(k) of the Act does exist and it would have been an abuse of discretion for the Regional Board not to issue a permit based upon available facts and regulations. Failure to issue such a permit would have unreasonably subjected the City of Los Angeles to potential enforcement actions, including citizen's suits, after December 31, 1974.

2. Contention: The petitioner alleges that it was an abuse of discretion for the Regional Board to issue Order No. 75-8 without defining fully those pollutants which the Terminal Island Treatment Plant could remove to a substantial degree. If pollutants which can be removed to a substantial degree are not designated as "compatible pollutants", the petitioner alleges that the following could occur:

(a) The petitioner could be required to build and install the same treatment facilities as would have been required if the discharge were directly to navigable waters even though the discharge is to the Terminal Island Treatment Plant, i.e., best practicable control technology.

(b) The petitioner could be required to build and install best practicable control technology and yet also be required to repay its portion of the cost of the Terminal Island Treatment Plant. Under these circumstances, the Terminal Island Treatment Plant would not serve a useful purpose in terms of treatment of the petitioner's waste.

(c) The petitioner could suffer in that its competitors have been able to obtain commitments for substantial removal of several pollutants. These competitors would be relieved of the aforementioned economic burdens imposed on petitioner and would enjoy a competitive advantage over petitioner.

Finding: The Regional Board in adopting Order No. 75-8 utilized the definition of compatible pollutant contained in Title 40 Code of Federal Regulations, part 128. The definition of "compatible pollutant" as contained in Section 128.121 of the Federal Regulations reads as follows:

> "For purposes of establishing Federal requirements for pretreatment, the term 'compatible pollutant' means biochemical oxygen demand, suspended solids, pH, and fecal coliform bacteria, plus additional pollutants identified in the NPDES permit if the publicly owned treatment works was designed to treat such pollutants, and in fact does remove such pollutants to a substantial degree."

The actual mechanism for establishment of pretreatment standards is outlined in Section 128.133 of the Federal Regulations as follows:

> "In addition to the prohibitions set forth in § 128.131, the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works by a major contributing industry not subject to section 307(c) of the Act shall be, for sources within the corresponding industrial or commercial category, that established by a promulgated effluent limitations guideline defining best practicable control technology currently available pursuant to sections 301(b) and 304(b) of the Act: Provided, That, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the

pretreatment standard applicable to users of such treatment works shall be correspondingly reduced for that pollutant; and provided further, that when the effluent limitations guideline for each industry category is promulgated, a separate provision will be proposed concerning the application of such guideline to pretreatment."

The language of Section 128.133 indicates that the publicly owned treatment works must be committed in its permit to remove specified percentages of any incompatible pollutant before any credit for such removal can be given to contributing industries. If such removal is "substantial", a pollutant may be deemed to be compatible. The term commitment is defined as "an engagement, a pledge to do something", and implies voluntary action on the part of the person making the commitment. It is our belief that EPA's intent in developing its approach to "compatible pollutants" was only to set up a mechanism for a voluntary pledge to remove specified percentages of certain pollutants. It was not EPA's intent to make such pledges mandatory, and hence the word "commitment" was utilized rather than the word "required". This interpretation of the language of Section 128.133 is fortified by the introductory comments contained in the Federal Register, Volume 38, No. 215, Thursday, November 8, 1973, where it is stated that "a commitment with respect to a percentage removal of an incompatible pollutant will be included in the permit at the <u>request</u> of a municipality where a basis for such commitment can be demonstrated." (Emphasis supplied)

However, it should be noted that the damages alleged by the petitioner would only occur if:

(a) The Administrator of EPA fails to correct the potential inequities resulting from the implementation regulations contained in Title 40 Code of Federal Regulations, part 128; or

(b) The Administrator of EPA fails to promulgate pretreatment standards for the petroleum point source category and fails to define those pollutants such as phenols which are technically compatible with municipal secondary treatment facilities; or

(c) The City of Los Angeles continues to refuse to commit itself to specific removals of other pollutants which are in fact compatible; or

(d) The construction grant contract to the City of Los Angeles for the Terminal Island Treatment Plant fails to require the City to make a commitment for removal of specified percentages of specified pollutants.

We are concerned with the potential problems in the area complained of by the petitioner and appreciate the difficulties caused by the present federal regulations. However, these regulations do apply, the Regional Board is obligated to implement them, and the difficulties of petitioner are not the result of any error of the Regional Board.

3. Contention: Petitioner alleges that the Regional Board erred in that the legislative date for complaince with pretreatment standards, three years from promulgation of the

pretreatment standards, does not coincide with the date that the City of Los Angeles would be required to have secondary treatment facilities installed. Hence, the petitioner contends that it may be required to install extensive pretreatment facilities which later might be abandoned. The petitioner further alleges that the specified percentages of removal should be based upon the capabilities of the facilities which are required to meet the 1983 effluent limitations rather than the removals which would occur in the secondary treatment facility scheduled for completion December 31, 1975.

Findings: We are aware that inequities may result from the differences in dates for compliance with pretreatment standards and municipal effluent limitations. In the case of Union Oil Company's Wilmington Refinery, however, the date for compliance with pretreatment standards, three years from promulgation of pretreatment standards, will come later than the date, December 31, 1975, for installation of secondary treatment by the City of Los Angeles at its Terminal Island treatment works. In any event, the deadline for compliance with pretreatment standards and municipal effluent limitations are a legislative mandate not subject to revision by the Regional Board. [See Section 307(b)(1) and 301(b)(1)(B) of the Act.]

With respect to the contention that pretreatment standards should be based upon removal percentages of pollutants to be achieved by the Terminal Island Treatment Plant by July 1, 1983, the federal regulations contained in Title 40 Code of Federal

Regulations, part 128, are clear that any allowances for municipal removals are to be based upon the removals which the municipal treatment facility is designed to achieve and does remove. (40 CFR 128.121). The federal regulations do not provide credit for removals of pollutants for treatment facilities which may not exist at the date which compliance with applicable pretreatment standards is to be achieved. Thus, we cannot conclude that the Regional Board erred. The Regional Board merely applied applicable federal regulations in the manner required by those regulations.

4. Contention: The petitioner alleges that the Regional Board was arbitrary, unreasonable, and unnecessarily restrictive in requiring the City of Los Angeles to institute a program to eliminate the use of chromium compounds for corrosion treatment in facilities which discharge to the Terminal Island Treatment Plant.

Finding: Requirement D.7 of Order No. 75-8 requires the City of Los Angeles to institute a program at its Terminal Island Treatment Plant to eliminate the use of chromium compounds for corrosion treatment. Our review of the record indicates that the evidence before the Regional Board did not demonstrate that such a provision is necessary nor was there evidence that acceptable effluent limits from the Terminal Island Treatment Plant can not be obtained through other technology.

III. CONCLUSIONS

After review of this matter, and for the reasons heretofore expressed, we conclude that the action of the Regional Board in adopting Order No. 75-8 was appropriate and proper except for inclusion of Requirement D.7. related to elimination of the use of chromium compounds for corrosion treatment in facilities which discharge to the Terminal Island Treatment Plant. The Regional Board correctly interpreted the federal pretreatment regulations and correctly applied these pretreatment regulations in adoption of Order No. 75-8.

IV. ORDER

IT IS HEREBY ORDERED that the Regional Board shall reconsider Requirement D.7. of Order No. 75-8 to determine the appropriateness and necessity of this requirement.

Dated: JUN 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