

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of)
Collier Carbon and Chemical)
Corporation for Review of Order)
No. 75-159 of the California)
Regional Water Quality Control)
Board, Santa Ana Region.)
NPDES Permit No. CA0105724.)
Our File No. A-128.)

Order No. WQ 77-20

BY THE BOARD:

On November 14, 1975, the California Regional Water Quality Control Board, Santa Ana Region (Regional Board) adopted Order No. 75-159, (NPDES Permit No. CA0105724) prescribing waste discharge requirements for fertilizer manufacturing facilities located at Brea, Orange County, California, which are owned and operated by Collier Carbon and Chemical Corporation, a wholly-owned subsidiary of the Union Oil Company of California.

On December 12, 1975, Collier Carbon and Chemical Corporation (Petitioner) submitted a petition to the State Water Resources Control Board requesting review of Santa Ana Regional Board Order No. 75-159 and, specifically, requesting modification of Effluent Limitation A.l.a. contained therein. By letter dated May 31, 1977, Petitioner submitted final written arguments and comments regarding its petition.

I. Background

The petitioner's Brea Plant is a chemical fertilizer and manufacturing complex, which discharges the following wastes:

- a. An intermittent wet weather spill of stormwater runoff from fertilizer manufacturing and storage areas into

an unlined drainage channel tributary to Fullerton Creek, thence to Coyote Creek, and the San Gabriel River.

- b. Up to 5,000 gallons per day of sanitary wastes to septic tank subsurface disposal systems at various locations throughout the plant area.

The petitioner collects its process wastewaters and the "first flush" 1/ of storm drainage waters from the Brea Plant for discharge to the Orange County Sanitation District. During periods of heavy rainfall, however, runoff waters from the Brea Plant are discharged to a tributary to Fullerton Creek and ultimately to the Pacific Ocean, as described in a. above.

The California Regional Water Quality Control Board, Santa Ana Region (Santa Ana Regional Board) adopted Order No. 75-159, prescribing waste discharge requirements for the petitioner's Brea Plant which include, among other provisions, the following:

"A. Effluent Limitations

- 1. The discharge of wastes as described in Finding 2a, above, shall not contain concentrations that exceed the below listed constituents as specified.

<u>a. Constituent</u>	<u>Maximum Concentration</u>
Total Kjeldahl Nitrogen + Nitrate Nitrogen ***	20 mg/l

C. Provisions

- 2. The discharger shall comply with the following time schedule to assure compliance with the total nitrogen requirement contained in A.1.a. and the boron and chlorine requirements contained in A.2.a. (Effluent Limitations) of this order:

1/ "First flush" is the term used by the Petitioner to describe the storm drainage waters from the Brea Plant which are discharged to the Orange County Sanitation District.

<u>Task</u>	<u>Completion Date</u>	<u>Report of Compliance Due</u>
Status Report	2/1/76	2/15/76
Full Compliance	11/1/76	11/15/76

. . . ."

On December 10, 1976, the Santa Ana Regional Board adopted Order No. 76-210,^{2/} which amended Section C.2. of Order No. 75-159 as follows:

"1. Provision No. 2 is amended to read:

The discharger shall comply with the following time schedule to assure compliance with the total nitrogen requirement contained in Effluent Limitation l.a. of this order:

<u>Task</u>	<u>Completion Date</u>	<u>Report of Compliance Due</u>
Status Report	2/1/77	2/15/77
Full Compliance	11/1/77	11/15/77

2. All other provisions and requirements of Order No. 75-159 shall remain unchanged."

As indicated by the findings contained in Order No. 75-159, the Santa Ana Regional Board considered numerous factors in adopting waste discharge requirements for the Petitioner's Brea Plant, including the provisions of the Water Quality Control Plan for the Santa Ana River Basin (Basin Plan),^{3/} which contains water quality objectives and identifies beneficial uses of waters in the Santa Ana Region, and the requirements of the Federal Water Pollution Control Act, as amended (P.L. 92-500, Federal Act).

2. Santa Ana Regional Board Order No. 76-210 extended the date by which full compliance with the nitrogen limitation contained in paragraph A.l.a. of Order No. 75-159 would be required. It did not affect any substantive issues raised by Collier's petition
3. The Water Quality Control Plan for the Santa Ana River Basin was adopted by the Santa Ana Regional Board and approved by the State Board, effective April 17, 1975.

II. Contentions

The petition raises the following contentions with respect to the nitrogen limitation contained in Effluent Limitation A.1.a. of Order No. 75-159, as set forth above:

1. The nitrogen limitation contained in paragraph A.1.a. of Order No. 75-159 is inappropriate and improper in that it is unreasonable and unattainable for the intermittent stormwater runoff discharge at Petitioner's Brea Plant.
2. The Regional Board's adoption of the nitrogen limitation contained in paragraph A.1.a. of Order No. 75-159 was inappropriate and unnecessary to implement the Basin Plan.
3. The Regional Board acted arbitrarily in adopting the nitrogen limitation contained in paragraph A.1.a. of Order No. 75-159, in that it did not consider or investigate evidence presented by Dr. Mann, Petitioner's expert witness in opposition to the proposed, and subsequently adopted, requirements.
4. The State Board is requested to modify paragraph A.1.a. of Regional Board Order No. 75-159, to include an effluent limitation for nitrogen which corresponds to that established in the Water Quality Control Plan for Ocean Waters of California for the nitrogen content of wastes discharged to the Pacific Ocean.

5. The petition states, at page 8, that "The above arguments also hold true and pertain to the prescribed limitation for filterable residue".^{4/}

III. Findings

Based upon our review of the record in this matter, including data and comments submitted in Petitioner's letter of May 31, 1977, we make the following findings. We note that the letter accompanying the petition, both dated December 12, 1975, requested a hearing for the stated purpose of presenting the Petitioner's position to the Board, rather than for the submittal of additional evidence to be considered in this matter. Petitioner's request for hearing was denied. Our findings are presented below in the general order in which the Petitioner's contentions are set forth above.

1. In order to address Petitioner's first contention and evaluate the requirements adopted by the Regional Board, we must first discuss applicable water quality standards established by the Federal Act, P.L. 92-500, and the requirements of the California Porter-Cologne Water Quality Control Act (California Water Code, Division 7, commencing with Section 13000). Section 301(b)(1)(A), P.L. 92-500, specifies that effluent limitations for industrial waste discharges must require the application of the "best practicable control technology currently available". Although for many point sources the Environmental

^{4/} The petition also contains the allegation that if treatment of the stormwater discharge is required due to the allegedly arbitrarily adopted effluent limitations, this will constitute an unreasonable taking of petitioner's property without due process of law. Petitioner, however, does not develop this argument. Therefore, in order to address it we would be required to speculate as to the supporting facts, reasoning, and authorities and then address our speculations, which would serve no useful purpose. We therefore decline to address this contention.

Protection Agency has defined the numerical limitations which constitute the "best practicable control technology currently available", the Regional Board in some cases may be required to adopt requirements where only more limited information is available and it must determine what constitutes the best practicable control technology currently available for a particular waste discharge. In applying this standard, by definition, the Regional Board's determination of appropriate requirements must include consideration of the best information available and the attainability of the requirements. However, where it is apparent that additional information may become available which may aid the Regional Board in refining, as necessary, the waste discharge requirements it has adopted, the Regional Board should be prepared to consider such evidence and revise the requirements, if appropriate.^{5/}

In the instant case, recognizing that water quality control with respect to stormwater runoff is closely related to in-plant clean-up and in-process actions, the Regional Board adopted the nitrogen limitation in paragraph A.l.a. of Order No. 75-159 based upon an estimate of achievable runoff quality if daily plant operations were characterized by a high standard of cleanliness and an avoidance of materials spills. Since the requirements were based upon limited information, the Regional Board included a monitoring program in Order No. 75-159, which would help to provide additional information, and specified that the nitrogen limitation would not be immediately effective. At the public hearing concerning the proposed

^{5/} Water Code Section 13381 provides that waste discharge requirements constituting an NPDES permit, adopted pursuant to Chapter 5.5 of Division 7 of the Water Code, may be modified for cause.

requirements, discussion among the Regional Board members clearly indicated a willingness to reevaluate the nitrogen limitation when additional data was available. When it later became apparent that, due to an unusually dry winter season, data obtained during 1975 and 1976 would not suffice to evaluate the adopted nitrogen limitation, the Regional Board adopted Order No. 76-210, extending the deadline for full compliance with the nitrogen limitation to permit additional data collection.

We find no evidence to indicate that the Regional Board's adoption of the nitrogen limitation contained in paragraph A.1.a. of Order No. 75-159 to meet the "best practicable control technology currently available" standard of the Federal Act was not reasonable, in the absence of additional data on runoff quality for this discharge to indicate more specifically an achievable nitrogen limit, and predicated upon the development of additional data to permit reconsideration of the adopted limit.

2. and 3. Petitioner's contentions numbered 2 and 3, above, will be discussed together, since both contentions address the nitrogen limitation contained in Order No. 75-159 as it relates to the Basin Plan for the Santa Ana Region.

In adopting requirements for the discharge of pollutants to the navigable waters of the United States which are within the jurisdiction of California, each California Regional Water Quality Control Board is specifically required to comply with the provisions of Water Code Section 13379.

In addition to reiterating the federal standard described previously herein, Section 13379 provides, among other things, that waste discharge requirements must also meet the following:

"(f) Any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses or to prevent nuisance."

Therefore, the Regional Board was required to consider appropriate provisions of the Basin Plan in adopting requirements which would also meet applicable federal water quality control standards.

The record in this case indicates that the Regional Board in fact carefully considered the Basin Plan provisions in adopting Order No. 75-159, including provisions relative to both the Santa Ana Forebay Groundwater Basin, the identified groundwater basin nearest to the Brea Plant stormwater discharge point area, and the San Gabriel River Tidal Prism, which eventually may receive any stormwater runoff discharged from the Brea Plant. The Regional Board has discretion in determining waste discharge requirements which are reasonably calculated to implement the appropriate basin plan and to protect the quality of waters in the Region. In prescribing appropriate waste discharge requirements the Regional Board is neither required to permit use of the full assimilative capacity of receiving waters, nor to determine the existence of a water pollution problem related to the waste discharge, prior to regulating constituents therein. Notwithstanding

the Regional Board's authority and duty to consider provisions of the Basin Plan in adopting requirements for petitioner, we find it unnecessary at this time to determine whether in fact the adopted nitrogen limitation properly implements the Basin Plan, due to our conclusion, stated below, that reconsideration of the nitrogen limitation of paragraph A.1.a. of Order No. 75-159 is necessary to assure that the numerical limitation for nitrogen constitutes the "best practicable control technology currently available".

4. Based upon the above discussion of Petitioner's contentions and consistent with our order below, we decline to modify the nitrogen limitation contained in paragraph A.1.a. of Order No. 75-159 in accordance with Petitioner's request. As a result, we do not here decide whether application of a nitrogen limitation similar to that contained in the Water Quality Control Plan for Ocean Waters of California would be appropriate for the wastes discharged from the Petitioner's Brea Plant.
5. By its brief reference to filtrable residue, as discussed at page 4 of this Order, Petitioner apparently contends that the filtrable residue limitation contained in paragraph A.1.a. of Order No. 75-159 is inappropriate, improper, and unnecessary and requests review thereof, without presenting evidence or arguments specifically to address this limitation. At the public hearing preceding the adoption of Order No. 75-159 Petitioner presented evidence relative to the proposed nitrogen limitation of paragraph A.1.a., but did not direct comments

or argument to the filtrable residue limitation proposed for the stormwater discharge. The record of this hearing indicates that some comments were received from the Orange County Water District concerning the filtrable residue limitations contained in the proposed Order. Regional Board staff testified, essentially, that the Basin Plan was the basis of the proposed limitations.

The record in this matter indicates that the Regional Board considered all available evidence and comments prior to the adoption of the requirements contained in Order No. 75-159, consistent with the authorities discussed above in findings 2 and 3. We find no error in the Regional Board's evaluation of the evidence presented or their adoption of the filtrable residue limitation contained in paragraph A.1.a. of Order No. 75-159, nor do we have available to us evidence to demonstrate that the adopted limitation is improper.

IV. Conclusions

After review of the entire record, and for the reasons heretofore expressed, we have reached the following conclusions:

1. The action of the Santa Ana Regional Board in adopting the nitrogen limitation contained in paragraph A.1.a. of Order No. 75-159 was appropriate and proper to apply the federally required standard of best practicable control technology currently available, based upon the best information available at the time of adoption of the requirements.

2. Since the actions of the Santa Ana Regional Board in adopting Order No. 75-159 were admittedly based on limited information, the propriety of the order should be reconsidered by the Regional Board, taking into account evidence developed by Petitioner pursuant to the terms of Order No. 75-159, and considering Collier's petition as a request for reconsideration of Order No. 75-159 by the Regional Board.

V. Order

IT IS, THEREFORE, ORDERED that:

1. The petition for review of Santa Ana Regional Board Order No. 75-159 is denied.
2. Order No. 75-159 is remanded to the Santa Ana Regional Board for reevaluation of the nitrogen limitation contained in paragraph A.1.a., based upon data obtained since the adoption of Order No. 75-159 in 1975, consistent with the intent expressed by the Regional Board upon its adoption of the Order.

Dated: AUG 18 1977

/S/ John E. Bryson,
John E. Bryson, Chairman

/S/ W. Don Maughan,
W. Don Maughan, Vice Chairman

/S/ W. W. Adams,
W. W. Adams, Member