

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of
Pacific Water Conditioning Associa-
tion, Inc., for Review of Order
No. 77-17, California Regional Water
Quality Control Board, Colorado River
Basin Region. Our File No. A-163.

Order No. WQ 78-14

BY THE BOARD:

On January 26, 1977, the California Regional Water Quality Control Board, Colorado River Basin Region (Regional Board) adopted Order No. 77-17, prescribing waste discharge requirements for D. P. J. Randall doing business as Bermuda Palms Mobile Home Park (discharger) situated in San Bernardino County.

Pursuant to Water Code Section 13320, the Pacific Water Conditioning Association, Inc., (petitioner) filed with the State Water Resources Control Board (State Board) a petition dated February 25, 1977, for review of the Regional Board's action.

The petitioner has subsequently filed an amended petition dated April 26, 1977, and final arguments and comments dated April 17, 1978.

Although the discharger received copies of the petition and amendments thereto, he has not responded.

I. BACKGROUND

The discharger, D. J. P. Randall, is the owner and operator of Bermuda Palms Mobile Home Park located approximately

three miles northeast of Earp, San Bernardino County, near the Colorado River. At the time Order No. 77-17 prescribing waste discharge requirements was adopted, the park was discharging domestic sewage from 81 mobile home spaces and 18 travel trailer spaces as authorized by Regional Board Resolution No. 66-18. The discharger proposed to expand his operation to a total of 116 mobile home spaces and 33 travel trailer spaces which discharge domestic wastewater through twenty-nine (29) septic tanks into two earthen basins, with a design capacity of 37,500 gallons per day (gpd), for final disposal by evaporation and infiltration. The discharger reported that the park had a total of eight water softeners which discharge brine into special tanks which are replaced periodically by a water softener service company.

The petitioner states that it is a trade association representing dealers and manufacturers of "point of use" water conditioning equipment who conduct business in and about the area in which the discharge is located.

The petitioner alleges that it is aggrieved by the adoption of Order No. 77-17 in that it prohibits the discharge of water softener brines resulting in depriving the members of the association of revenue and business by eliminating an existing local market for the sale and repair of self-regenerative water softeners.

II. CONTENTIONS AND FINDINGS

The petitioner raises three legal issues which will be dealt with separately below:

1. Contention: The petitioner contends that Order No. 77-17 violates Section 13360 Water Code in that it specifies the particular manner in which compliance with the waste discharge requirements must be accomplished.

Discharge specification A-10 provides that "there shall be no discharge of water softener brines".

In its letter of April 17, 1978, the petitioner concedes that the Regional Board has the authority to prohibit "the discharge of brine solutions generally or brine solutions of a certain concentration". It objects, however, to the specific designation of water softener brines in the prohibition in question.

Findings: Section 13360 Water Code provides in part:

"No waste discharge requirement or other order of a regional or state board or decree of court issued under the provisions of this division shall specify the design, location, type of construction or particular manner in which compliance may be had with such requirement, order or decree, and the person so ordered shall be permitted to comply therewith in any lawful manner...."
(Emphasis Added.)

We do not agree with petitioner. The order prohibits a particular type of discharge. It neither specifies design, location, type of construction or any manner in which the discharger is to treat its waste. It merely prohibits a discharge of a particular type of waste. There are no orders or specifications requiring or specifying methodology contained in the order.

The authority of the Regional Board to prohibit discharge is well settled. According to Water Code Section 13243:

"A regional board, in a water quality control plan or in waste discharge requirements, may specify certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted.

Petitioner's argument that use of the terminology "water softener brines" is discriminatory is without merit. There is no evidence that there are sources of any significant amount of other kinds of brines within the Bermuda Palms Mobile Home Park. That there are water softeners within the Park is evidenced by finding Number 3 of Order 77-17. Finding Number 3 reads as follows:

"The discharger reports that the park has a total of eight (8) water softeners which discharge brine into special tanks. These tanks are replaced every 28 days by a water softener service company."

Although the finding indicates that no softeners currently discharge into the Park's sewage treatment facilities, it also indicates that water softeners are in use in the area and, thus, a prohibition specifically related to water softener brines is reasonable.

2. Contentions: The petitioner contends that the Regional Board failed to comply with the provisions of the California Environmental Quality Act of 1970 when adopting the subject waste discharge requirements.

Findings: In support of its contention the petitioner refers to its points and authorities submitted in support of its Corona and Redlands petition (our Files Nos. A-127 and 122).

The petitioner fails to recognize that these Santa Ana Region petitions related to NPDES permits for point source discharges to surface waters; while the instant order concerns waste discharge requirements to septic tanks which are eventually pumped to evaporation and percolation ponds. The legal issues, as well as the factual circumstances, are substantially different.

A review of the Regional Board files indicates that the discharger commenced operations under waste discharge requirements adopted September 22, 1966 (Regional Board Resolution No. 66-18). On March 31, 1976, pursuant to a request from the Regional Board for information to update the requirements, the discharger submitted a Report of Waste Discharge. At the time of its Report of Waste Discharge, the discharger was operating 81 mobile home spaces and 18 travel trailer spaces, all discharging to 29 septic tanks from which the wastewater was pumped to two large ponds. The

discharger indicated a five year proposal to expand its facilities to 116 mobile home spaces and 33 travel trailer spaces, all of which would discharge into the existing disposal facilities.

It should be noted that Regional Board Resolution No. 66-18, adopted in 1966, provided for a total of 160 spaces and a capacity of 37,500 gallons per day (gpd). The proposal of the discharger for his present expansion of building facilities is to only 149 spaces, well within the limits allowed by the old discharge requirements. There is some minor language change in Order No. 77-17 as opposed to Order No. 66-18; however, the only substantive change is the addition of the provision prohibiting discharge of water softener brines. The Regional Board prepared and filed a Notice of Exemption under CEQA within several days following adoption of the order. The Notice of Exemption classified the activity as an ongoing project in accordance with the provisions of the California Environmental Quality Act, (Public Resources Code Section 21000, et seq) and the Resources Agency Guidelines implementing CEQA (Title 14, California Administrative Code, Chapter 3, Section 15070(b)(3)) because the discretionary governmental approvals on or after April 5, 1973, do not involve a greater degree of responsibility or control over such activity than the governmental approvals received prior to that date.

We find that the project in question is an "ongoing project". Discretionary governmental approval for construction of the mobile home park was granted when the area in which the park is located was zoned to permit the development of mobile home parks. San Bernardino County zoned the area in this manner prior to April 5, 1973. Therefore, the filing of the Notice of Exemption was appropriate and proper.

3. Contentions: The petitioner contends that the Regional Board failed to make appropriate findings when adopting the subject discharge requirement.

Findings: A review of the findings included in Order No. 77-17 reveals that, after a recital of the discharger's operations and physical facilities, the Regional Board found:

* * *

- "4. This discharge has been subject to waste discharge requirements adopted in Board Resolution No. 66-18."
- "5. The Water Quality Control Plan for the East Colorado River Basin was adopted by the Board on April 10, 1975, and this order implements the objectives stated in the plan."
- "6. The beneficial uses of the groundwaters of the Colorado Hydrologic Unit are:
 - a. Municipal Supply
 - b. Industrial Supply
 - c. Agricultural Supply
- "7. The Board has notified the discharger and interested agencies and persons of its intent to prescribe waste discharge requirements for the proposed discharge.
- "8. The Board, in a public meeting, heard and considered all comments pertaining to the proposed discharge."

The Regional Board's findings clearly recite the fact that this is an ongoing project which was already subject to waste discharge requirements. The findings further indicate that the requirements contained in the order implement the Water Quality Control Plan for the East Colorado River Basin--7B (Basin Plan) and that all comments received pertaining to the discharge were considered.

The Basin Plan states that three water quality indicators, i.e., values in Table 4-5 of the Basin Plan, water quality maps in Chapter 14 of the Basin Plan, and well data, shall be used conjunctively in setting waste discharge requirements. (See Chapter 4 of the Basin Plan, page I-4-12.) Table 4-5 (page I-4-13 of the Basin Plan) establishes that the average TDS objective for groundwater in the Vidal hydrologic subunit, where the Bermuda Palms Mobile Home Park is located, shall be 810 mg/l. Chapter 14 of the Basin Plan

indicates that the average TDS for 35 wells sampled in the Vidal subunit was 977 mg/l in 1972 (see page II-14-13). The Regional Board files contain evidence of two recent analyses of the quality of the well water which serves as the water supply for the Mobile Home Park. TDS is shown to be 720 mg/l for a sample taken in December of 1975 and 820 mg/l for a sample taken in November of 1977. (See chemical analysis report dated December 9, 1975 by Clinical Laboratory of San Bernardino, Inc. and Chemical Analysis of Sample, Bermuda Palms Mobile Home Park well, November 17, 1977, by California Department of Health, Sanitation and Radiation Laboratory, respectively.)

Since the wastewater discharged from the trailer park's septic tanks has been subject to human use, the salt content of the discharge would be substantially greater than the 720-820 mg/l found in the water supply during the above cited analyses. There is no evidence that the wastewater is diluted before it enters the groundwater. Therefore, even without receiving discharges from water softeners, the Mobile Home Park is already discharging wastewater which is higher in TDS than the average that would be required for compliance with the water quality objective contained in Table 4-5 of the Basin Plan.

No evidence has been presented that the average TDS for wells in the subunit has changed from the 977 mg/l which existed in 1972. Further, there is no basis in the record for a contention that other discharges would counter balance a high TDS level in the discharge from the Mobile Home Park.

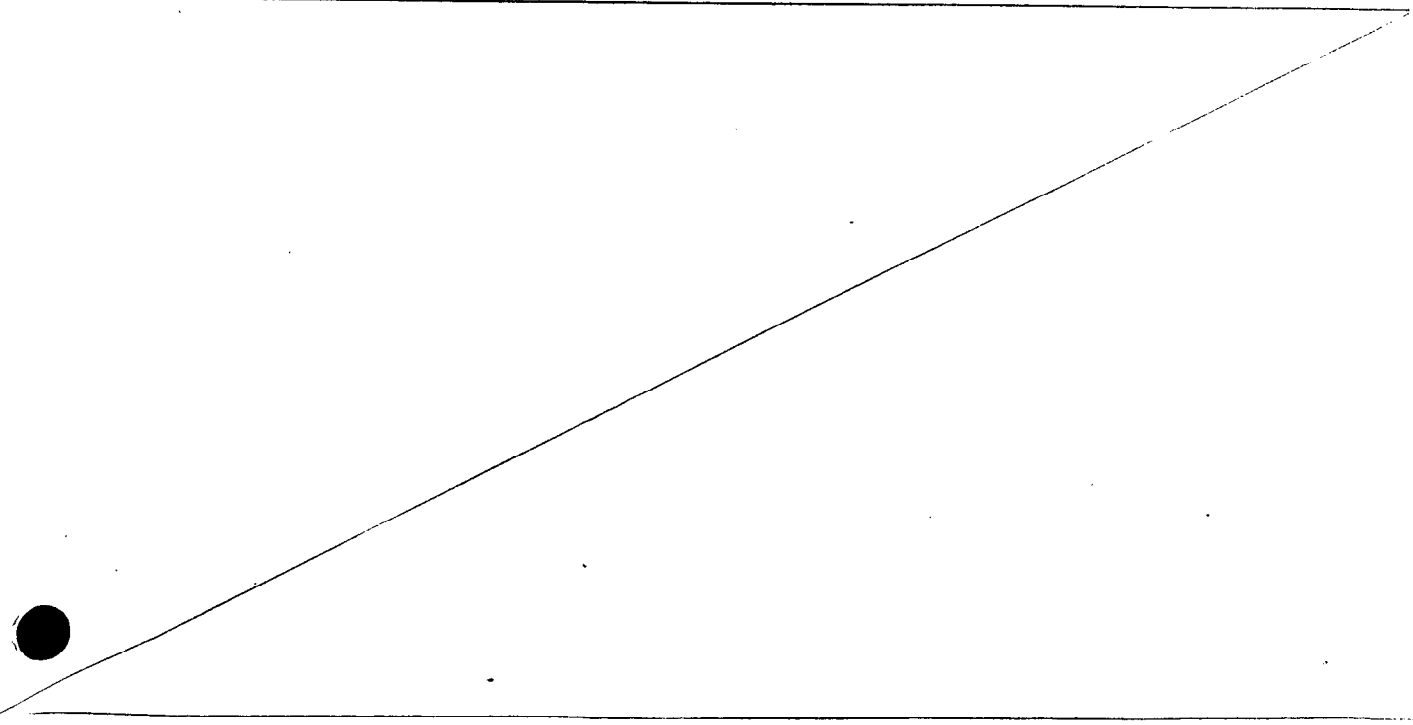
Since the discharge from the Park is already exceeding the average groundwater quality called for in the Basin Plan, and there is no indication of higher quality discharges from other sources to counterbalance the high level TDS from the Park, the Regional Board acted appropriately in prohibiting the discharge of additional brines by the use of self-regenerative water softeners. Thus, finding Number 5 of the Regional Board's order indicating that the order implements the objectives stated in the Basin Plan was both appropriate and proper.

III. FURTHER FINDINGS

Our analysis of the facts in this case indicates that they are very similar to the facts involved in our earlier "Rancho Caballero" Order (State Board Order No. 73-4). That is, we have a discharge in excess of groundwater objectives going into a groundwater basin that is already exceeding its objectives with no evidence of assimilative capacity in the basin. In the Rancho Caballero case, we found that such a discharge should not be permitted. Under the circumstances, the Regional Board should consider either amending its Basin Plan such that this discharge can meet the applicable objectives or adopting a time schedule for compliance with a prohibition against further discharges in excess of applicable objectives from the Bermuda Palms Mobile Home Park.

IV. CONCLUSIONS

After review of the record, and consideration of the contentions of the petitioner and for the reasons discussed above, we conclude as follows:

1. Order No. 77-17 is not in violation of Section 13360, California Water Code.
 2. The Regional Board made appropriate and necessary findings.
 3. The Regional Board complied with the provisions of the California Environmental Quality Act of 1970 as amended.
 4. In keeping with our earlier "Rancho Caballero" Order, the Regional Board should consider amending the Basin Plan or adopting a time schedule for compliance with a prohibition against further discharges in excess of applicable objectives from the Bermuda Palms Mobile Home Park.
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IT IS, THEREFORE, ORDERED that:

1. The petition for review of Order No. 77-17 is denied.
2. The Regional Board either amend the Basin Plan so that this discharge can meet the applicable objectives or adopt a time schedule for compliance with a prohibition against further discharges in excess of applicable objectives from the Bermuda Palms Mobile Home Park.

Dated: AUG 21 1978

/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

/s/ William J. Miller
William J. Miller, Member