

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of )  
Marina County Water District for )  
a Stay and Review of Order )  
No. 79-48 (NPDES Permit )  
No. CA0047988), California )  
Regional Water Quality Control )  
Board, Central Coast Region. )  
Our File No. A-235. )

Order No. WQ 79-30

BY THE BOARD:

On April 20, 1979, the California Regional Water Quality Control Board, Central Coast Region (Regional Board) issued Order No. 79-48 (NPDES Permit No. CA0047988), waste discharge requirements for Marina County Water District (Marina) and Cease and Desist Order No. 79-07 requiring Marina to cease and desist discharging wastes contrary to its waste discharge requirements. Both the permit and the cease and desist order state "effective July 1, 1981, discharge of municipal wastewater within the Monterey Bay prohibition zones (contained in the Basin Plan) is prohibited." On May 22, 1979, the State Board received a petition from Marina, which is presently discharging into the prohibition zone, seeking a stay of the permit and cease and desist order until a hearing on certain issues, which was denied by the Regional Board, is held.

I. BACKGROUND

A Water Quality Control Plan for the Central Coast Basin was adopted by the Regional Board on March 14, 1975 and approved by the State Board on March 20, 1975. One of the actions

taken in the Basin Plan is the establishment of certain discharge prohibitions "due to unique cultural, scenic, aesthetic, historical, scientific, and ecological values of the Central Coast Basin, and the necessity to protect public health, and the desire to achieve water quality objectives."<sup>1/</sup> The Basin Plan states that "waste discharges ... are prohibited effective July 1, 1977, in Monterey Bay, northern and southern extreme within the following areas: ... inshore from a line extending from Point Pinos to the mouth of the Salinas River; and the offshore area within a three-mile radius of Point Pinos."<sup>2/</sup> On June 10, 1977, the Basin Plan was amended to state that waste discharge is prohibited "effective July 1, 1983, in the southern extreme of Monterey Bay, inshore from an imaginary line extending from Point Pinos (36°-38.3'N, 121°-56.0'W) to the mouth of the Salinas River (36°-44.9'N, 121°-48.3'W)"<sup>3/</sup> Marina's prior NPDES permit also contained a prohibition on discharge to Monterey Bay; however, it was to be effective June 3, 1982. As a result of the Basin Plan prohibition, the cities of Pacific Grove, Monterey, Salinas, Seaside, Del Rey Oaks, and Fort Ord are constructing a regional wastewater treatment system. This was found to be the most cost effective solution to the wastewater problems of the area. The regional system is being built with state and

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1. Water Quality Control Plan Report, Central Coast Basin, page 5-41.
  2. Water Quality Control Plan Report, Central Coast Basin, page 5-42.
  3. California Regional Water Quality Control Board, Central Coast Region, Resolution No. 77-04, Amendment approved by the State Board, August 18, 1977, State Water Resources Control Board Resolution No. 77-73.

federal Clean Water Grant funds. Marina would also have been eligible for state and federal financial assistance if it chose to join in the regional system, but it has not done so.

## II. CONTENTIONS AND FINDINGS

1. Contention: Petitioner Marina has requested that pending review of the issues raised in its petition and pending the hearing which it has requested, the effect of the action of the Regional Board in adopting the NPDES permit and cease and desist order be stayed.

Findings: Since the merits of the petition are being resolved in this order and since, as discussed in our subsequent findings, no further hearing is required prior to our decision on the issues raised in this appeal, it is not necessary for us to consider the request for a stay.

2. Contention: Marina asserts that the validity of the "zone of prohibition" was a material issue relevant to the issuance of the NPDES permit and that the Regional Board should have considered evidence as to the propriety of the prohibition. In particular, Marina requests consideration of expert testimony and scientific evidence on the lack of justification for the prohibition zone.

Findings: We have dealt with the issue of what factors must be considered by a Regional Board prior to issuing waste

discharge requirements in innumerable State Board orders.<sup>4/</sup> Water Code Section 13263 requires that waste discharge requirements implement the relevant water quality control plan. A Regional Board may not adopt waste discharge requirements clearly contrary to its Basin Plan. Evidence as to the propriety of the discharge prohibition which is contained in the Basin Plan can only be accepted in the context of a public hearing to consider revision of the Basin Plan. On June 18, 1979, the Regional Board held a preliminary hearing to determine whether there was sufficient new evidence to warrant further review of the southern Monterey Bay prohibition zone as delineated in the Basin Plan. Marina was notified of this hearing and given an opportunity to present relevant evidence pertaining to this matter.<sup>5/</sup> As a result, the petitioner participated in, and submitted evidence at, the hearing. We find, therefore, that the Regional Board action relative to this contention was entirely appropriate and proper.

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4. For a lengthy discussion of the statutory requisites applicable to prescribing waste discharge requirements, see State Board Order No. WQ 77-16 (Pacific Water Conditioning Association); see also State Board Order No. WQ 78-8 (In the Matter of Tahoe-Truckee Sanitation Agency, et al) p. 12, et seq.; State Board Order No. WQ 79-22 (In the Matter of the Petitions of Dart Industries, Inc. and Truckee Sanitary District) p. 10, et seq.; Hampson v. Superior Court for County of Inyo (1977) 67 Cal.App.3d 472.
  5. Notice of Public Hearing to Consider Marina County Water District's Objections to a Discharge Prohibition in the Southern Extreme of Monterey Bay, issued by the California Regional Water Quality Control Board, Central Coast Region, May 8, 1979.

It should be noted that the preliminary hearing referenced above is the subject of a separate appeal which was filed by Marina on June 18, 1979. That appeal is not dealt with in this order.

3. Contention: Marina contends that secondarily treated effluent is not a "pollutant" and therefore discharge of such effluent is not subject to the issuance of an NPDES permit pursuant to Section 402 of the Clean Water Act.

Findings: "Pollutant" is defined in Section 502(6) of the federal Clean Water Act as including sewage and industrial, municipal and agricultural waste discharged into water. Secondarily treated effluent is merely a type of sewage or waste and thus is a "pollutant" subject to regulation under the Clean Water Act. Moreover, it is well established that states which have the authority to implement the NPDES permit program may, within their discretion, impose more stringent standards than those established by the federal Clean Water Act. Therefore, regulation of the disposal of secondarily treated effluent is clearly within our jurisdiction.

4. Contention: Marina contends that the Notice of Public Hearing regarding adoption of the NPDES permit did not include a "fact sheet" as required by the Title 23, California Administrative Code, Section 2235.4.

Findings: Marina is correct in its assertion that the Regional Board should have prepared and distributed a fact sheet together with the public notice and tentative waste discharge requirements since the permit is for the discharge of

more than 500,000 gallons on any day of the year to navigable waters (Section 2235.4(c), Title 23, California Administrative Code). This was a procedural error by the Regional Board. The Regional Board is directed to comply with this requirement in processing all comparable NPDES permits in the future. However, a review of the tentative waste discharge requirements indicates that all the information which is required to be in a fact sheet was contained in the tentative requirements which were distributed to Marina and interested parties for comment prior to Regional Board consideration of adoption of the NPDES permit on April 20, 1979. Since Marina received the tentative requirements, participated in the hearing prior to adoption of the permit, and has not alleged harm due to failure to receive the same information in the format of a fact sheet, we do not feel that this contention is sufficient to merit voiding of the NPDES permit. In addition, even if a fact sheet had been prepared, pursuant to State Board regulations, it would not have been sent to Marina unless Marina had requested it. Our review of the record indicates that Marina did not request a copy of the fact sheet. We conclude, therefore, that the lack of a fact sheet on the discharge does not necessitate invalidation of the permit.

III. ORDER

IT IS HEREBY ORDERED that:

1. The request for a stay is denied.
2. In all other respects, the petition is dismissed.

Dated: **SEP 20 1979**

/s/ Carla M. Bard  
Carla M. Bard, Chairwoman

/s/ William J. Miller  
William J. Miller, Vice Chairman

/s/ W, Don Maughan  
W. Don Maughan, Member

ABSENT  
L. L. Mitchell, Member

10-10-10

