

7/1/79

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of )  
Coastal San Luis Resource Conservation )  
District for Review of Action of the )  
California Regional Water Quality )  
Control Board, Central Coast Region, )  
Regarding NPDES Permit No. CA0047003 )  
(Requirements for South San Luis )  
Obispo County Sanitation District). )  
Our File No. A-227. )

Order No. WQ 79-38

BY THE BOARD:

On March 16, 1979, the California Regional Water Quality Control Board, Central Coast Region, (Regional Board) adopted Order No. 79-35 (NPDES Permit No. CA0047003) for the South San Luis Obispo County Sanitation District (SSLOCSD). On April 12, 1979, the State Water Resources Control Board (State Board) received a petition from the Coastal San Luis Resource Conservation District (petitioner) requesting the State Board to amend the permit to include certain conditions that would address environmental impacts associated with issuance of the permit. In response to the request of the petitioner, staff of the State Board agreed to include the environmental documents on the Pismo Beach and the SSLOCSD Clean Water Grants projects as part of the administrative record for purposes of review. On that basis, the petitioner did not request a hearing prior to resolution of the issues raised in the petition.

I. BACKGROUND

On June 14, 1974, the SSLOCSD was issued an NPDES permit for its wastewater treatment and disposal facilities. This permit

was to expire on June 1, 1979; therefore, on March 16, 1979, the Regional Board issued the renewed NPDES permit for SSLOCSD which is the subject of this petition. The new permit contains requirements which are applicable to discharge from both SSLOCSD's existing broken outfall and a new, longer joint outfall which is in the process of being built to serve the needs of both SSLOCSD and Pismo Beach. The City of Pismo Beach, which will also use the joint outfall, is subject to Order No. 77-43 (NPDES Permit No. CA0048666) which contains a time schedule either for construction of a joint outfall with SSLOCSD or for making the necessary improvements to Pismo Beach's existing ocean outfall.

In order to deal with the petitioner's contentions, it is necessary to review the circumstances which led to the issuance of SSLOCSD's NPDES permit.

The SSLOCSD has a 2.5 mgd treatment plant which serves the wastewater treatment needs of the communities of Arroyo Grande, Grover City and Oceano. During the winter of 1972/73, a severe storm caused the deep water portion of the outfall from the treatment plant to the Pacific Ocean to be swept away. Effluent is therefore presently being discharged through a broken outfall into the surf zone of the ocean. This has been found to be a threat to both public health and water quality.<sup>1/</sup> In 1973 the Regional Board obtained a court order requiring repair and/or replacement of the outfall as soon as possible and issued a cleanup and abatement order.

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1. See, for example, the peremptory orders issued by the San Luis Obispo County Department of Public Health on August 8, 1973, and May 2, 1975.

1. Contention: The petitioner contends that the NPDES permit for SSLOCSD should be modified to require an assessment of the cumulative impacts of non-point sources of pollution upon receiving waters. The impacts to be analyzed would be from existing or potential development discharging to the SSLOCSD system.

Finding: The NPDES permit which was issued to SSLOCSD in 1974 states that the maximum daily dry weather volume discharged shall not exceed 2.5 million gallons.<sup>2/</sup> The permit which is the subject of this petition contains a comparable provision.<sup>3/</sup> Therefore, although the capacity in the new ocean outfall which will be operated in accord with this permit exceeds 2.5 mgd, the limiting factor for operation of the facility will be capacity in the treatment plant; this capacity has not changed since it was established in 1974 and will not be affected by the present Clean Water Grants project. Issuance of the NPDES permit therefore will not result in an increase in non-point source pollution beyond that permitted under the prior permit. Analysis of any future impacts from non-point sources, prior to specific plans to expand the treatment plant capacity, would be premature.

The determining factor for operation of the Pismo Beach treatment facilities is also the capacity of its treatment plant. It will remain at 1.2 mgd, unaffected by the present Clean Water

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2. California Regional Water Quality Control Board, Central Coast Region, Order No. 74-54, NPDES Permit No. CA0048003, Effluent Limitation #7.
  3. California Regional Water Quality Control Board, Central Coast Region, Order No. 79-35, NPDES Permit No. CA0047003, Effluent Limitation #9.

Grants project. Therefore, there will be no increase in non-point source pollution beyond that which was possible under the NPDES permit which was issued to Pismo Beach in 1977 and is currently in effect.

As mentioned in our discussion of the background which led to this petition, Clean Water Grant funds are traditionally used to fund outfall improvements based on the projected population for 20 years in the future and treatment plant improvements are funded based on the projected population for 10 years in the future. This size differential has been considered appropriate in light of the primary environmental impacts of constructing an outfall or other "in-ground" type facilities. Since limited treatment plant capacity will control the secondary impacts, we find that a 20-year outfall capacity is proper to minimize destruction of flora and fauna, noise, erosion, etc., if future expansion takes place.

The petitioner alleges that since the present discharge does not meet federal and state water quality standards, the environmental impacts to be analyzed should include those from all proposed SSLOCSD outfall discharges that meet similar standards, e.g., all existing and future discharges that could be accommodated by the outfall presently under construction. We disagree. The adoption of a cease and desist order requiring replacement of a broken outfall does not result in the need to reassess the impacts of all existing and future development that could have been accommodated by the facilities needing replacement. We do not believe that either the California Water Code or the California Environmental Quality Act contemplated such retroactive analysis. And, as discussed above, any new capacity in the outfall

beyond the existing treatment plant capacity will not create secondary impacts until a project is undertaken to expand the treatment plant.

It is also important to note that the Regional Board has been considering the problem of non-point source runoff as part of the Federal Clean Water Act Section 208 planning process. We understand that the petitioner participated in the development of proposed Management Agency Agreements to establish erosion controls. Action was taken at the Regional Board meeting last month to adopt basin plan amendments for control of non-point source pollution based upon a 208 Erosion Study completed by the California Association of Resource Conservation Districts.

2. Contention: The petitioner requests that the NPDES permit include a condition requiring assessment of the impacts of existing or potential development producing SSLOCSD outfall discharges upon prime agricultural lands and flood plains.

Finding: As discussed above, it is not necessary to assess at this time the impacts of development that could have been accommodated by the SSLOCSD treatment facilities prior to replacement of the ocean outfall. Impacts of future development should be assessed if, and when, steps are taken to expand existing treatment plant capacity.

We hasten to add, however, that impacts on prime agricultural land and flood plains are issues most appropriately dealt with at the local level. The California Environmental Quality Act reflects this in Public Resources Code Section 21002.1(d) which distinguishes the role of a lead agency

from that of a responsible agency. A public agency functioning as a responsible agency has responsibility for considering only the effects of those activities involved in a project which it is required by law to carry out or approve. This is reflected in the State Board regulations for implementation of CEQA relative to Clean Water Grants projects. Title 23, California Administrative Code, Section 2719.5 states:

"The state board, acting as a responsible agency, may deny, postpone or condition discretionary financial assistance for any project subject to CEQA which is to be undertaken by any person where the state board determines that such action is necessary to protect against environmental damage to water resources, prevent nuisance, minimize adverse environmental impacts on water resources, or ensure long-term protection of water resources."  
(Emphasis added.)

We believe that the same limitation applies to the issuance of waste discharge requirements and Section 2718 of our regulations, which was cited by the petitioner, should be interpreted accordingly.<sup>4/</sup>

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4. Title 23, California Administrative Code, Section 2718 states:

"The board may prohibit or condition the discharge of waste and may condition water reclamation requirements in order to protect against environmental damage, minimize adverse environmental impacts, or ensure long-term protection of the environment."

3. Contention: Petitioner requests that the permit require an analysis of the effect of SSLOCSD ocean outfall construction upon short-term and long-term wastewater reclamation opportunities in the combined Pismo Beach/SSLOCSD service areas prior to disbursement of construction grant funds.

Finding: The NPDES permit for SSLOCSD contains the following provision:

"The discharger shall prepare an assessment of the short and long term needs, opportunities, and feasibility for wastewater reclamation and reuse in this service area. This assessment shall include: 1) a discussion of the effect of proposed ocean outfall disposal upon short-term and long-term reclamation and reuse opportunities; 2) an identification of effluent disposal levels at which reclamation and reuse are economically feasible as an element of a comprehensive disposal program that may include ocean outfall backup; 3) a determination of criteria for the selection of areas to receive reclaimed water which ensures that such water maximizes, to the extent feasible, the viability of agricultural use on prime lands; and 4) an analysis of any changes in this permit necessary to ensure that effluent reclamation and reuse opportunities are maximized. This assessment shall be submitted to the Board by March, 1980."

A review of the discussion which took place at the Regional Board meeting prior to insertion of this provision indicates that reclamation was considered during the facilities planning stage of the Clean Water Grants project to replace the broken outfall in 1975-76 and in the EIR which was finalized in May 1976. At that time, reclamation was not found to be a feasible, cost-effective alternative to construction of an ocean outfall. The Regional Board found that the potential for reclamation may have increased over the past several years and therefore included the above provision in SSLOCSD's permit.

We have determined that, for several reasons, it would not be appropriate to delay the present ocean outfall construction until reclamation opportunities are reviewed for a second time. Use of the broken outfall which discharges to the surf zone has been found to be a public health hazard. Further delays in replacing the broken outfall will only continue this ongoing problem. In addition, it seems highly improbable that sufficient land will be found for both reclamation and storage of reclaimed water so that no outfall at all will be necessary.<sup>5/</sup> The outfall would thus not be totally eliminated; it would merely be reduced in size. We do not believe that the cost savings from reducing the size of the outfall would be significant enough to justify construction delays at this late date. Finally, we do not believe that construction of the outfall will in fact deter reclamation opportunities. If reclamation is feasible, there is no reason why it cannot, and will not, proceed regardless of the capacity of the outfall. Therefore, although we agree with the Regional Board's determination that reclamation possibilities should be explored more thoroughly, we feel it would be inappropriate to delay construction of the joint outfall until such studies are done.

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5. The EIR for the SSLOCSD project states that at least 375 acres would be required for irrigation of projected effluent flows with at least 60 additional acres required for construction of a reservoir for winter storage and 80 acres for a buffer. Final Environmental Impact Report for the Proposed Wastewater Treatment Plant Improvements and Effluent Disposal Project for the South San Luis Obispo County Sanitation District May 1, 1976, p. B-11 and E-41.



Before turning to the petitioner's next contention, we note that the Department of Water Resources is planning a study of the potential of marketing reclaimed water from SSLOCSD's treatment plant in fiscal year 1980-81.<sup>6/</sup> The Regional Board should consider possible modifications to the study which the NPDES permit requires of SSLOCSD in order to avoid duplication of the Department of Water Resources' research.

4. Contention: Petitioner contends that the NPDES permit should be remanded to the Regional Board for further consideration of appropriate conditions based on environmental impacts identified in the EIR which was completed by Pismo Beach after SSLOCSD's permit was approved.

Finding: The NPDES permit for SSLOCSD states:

"The City of Pismo Beach is currently preparing an EIR regarding a project to transport the waste to the proposed outfall. If upon completion of the Pismo Beach EIR or upon further staff review of the project EIR, any significant adverse effects on water quality are identified this Board will reconsider this permit and make appropriate changes." (Order No. 79-35, p. 2, Finding 9.)

As discussed in regard to Contention 2 above, under the provisions of the CEQA the Regional Board is limited when acting as a responsible agency to mitigating or avoiding only the effects of a proposed project on water resources. The Regional Board was therefore correct in so limiting its review of the final EIR.

Before dealing with the adequacy of the Regional Board statement in the NPDES permit which is cited above, it is appropriate

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6. Letter from Thomas Butch, District Administrator, SSLOCSD, to W. Don Maughan, Acting Chairman, SWRCB, dated June 7, 1979.

to comment on the petitioner's concerns with the alleged inadequacies of the environmental documents prepared by SSLOCSD and Pismo Beach. We did not find the project description contained in the EIRs to be nearly as confusing or lacking in clarity as did the petitioner. We note, in addition, that the Environmental Protection Agency found that the requirements of the National Environmental Protection Act were met.<sup>7/</sup> The key to our conclusion that the environmental impacts on water resources were adequately analyzed, as discussed in an earlier part of this order, is that there will be no change in the treatment plant capacity of either discharger.

The petitioner contends that the Regional Board could not properly evaluate the environmental impacts associated with the permit issuance without a finalized Pismo Beach EIR. We do not believe that the particular facts of this situation warrant such a conclusion. The Pismo Beach EIR dealt primarily with an analysis of the environmental effects of transporting effluent from the Pismo Beach treatment plant to the proposed joint outfall. If any adverse impacts in water quality had been identified in the EIR, they would most appropriately be considered, and mitigated if necessary, in the renewal of Pismo Beach's existing NPDES permit.

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7. Letter to Jeffrey F. Bordelon, Attorney for Coastal San Luis Resource Conservation District, from Clyde B. Eller, Director, Enforcement Division, Environmental Protection Agency, Region IX, dated May 23, 1979. Letter to Honorable Robert J. Lagomarsino, U. S. House of Representatives, from Paul DeFalco, Jr., Regional Administrator, Environmental Protection Agency, dated July 19, 1979. Letter to Jeffrey F. Bordelon, Attorney for Coastal San Luis Resource Conservation District, from Richard A. Coddington, Chief, California Branch, Water Division, Environmental Protection Agency, Region IX, dated October 18, 1979.

In any event, we have reviewed the final EIR for Pismo Beach and do not find that it warrants any changes in SSLOCD's permit.

5. Contention: Five months after filing its petition, petitioner supplemented its petition by requesting expansion of the legal issues to incorporate by reference the pleadings that have been filed in Pacific Legal Foundation v. Costle and DeFalco, (Civ. No. 8-79-429 PCW) which was then pending in the United States District Court for the Eastern District of California.

Finding: This lawsuit concerns allegations that certain NPDES permits are in violation of the Federal Clean Water Act because the permits do not ensure compliance with the EPA guidelines required pursuant to Section 403(c) of the Clean Water Act. Section 403(c) provides for EPA's promulgation of guidelines "for determining the degradation of the waters of the territorial seas, the contiguous zone, and the oceans" with reference to seven statutory criteria. EPA originally promulgated Section 403(c) ocean discharge guidelines in 1973 but withdrew them in 1977 and has not published revised guidelines. Pacific Legal Foundation's lawsuit sought promulgation of these guidelines.

On October 31, 1979, the federal court ordered EPA to develop final ocean discharge guidelines by July 30, 1980. Until then, interim guidelines are in effect which require that, in issuing, re-issuing or reviewing NPDES permits for ocean dischargers, the criteria enumerated in Section 403(c) must be considered. In addition, where appropriate, the ocean dumping criteria (40 CFR 227) which were promulgated under the Marine Protection, Research and Sanctuaries Act of 1972, as amended, are to be applied.

Section 403(c) of the Clean Water Act lists the following seven criteria:

"(A) the effect of disposal of pollutants on human health or welfare, including but not limited to plankton, fish, shellfish, wildlife, shorelines, and beaches;

(B) the effect of disposal of pollutants on marine life including the transfer, concentration, and dispersal of pollutants or their byproducts through biological, physical, and chemical processes; changes in marine ecosystem diversity, productivity, and stability; and species and community population changes;

(C) the effect of disposal, of pollutants on esthetic, recreation, and economic values;

(D) the persistence and permanence of the effects of disposal of pollutants;

(E) the effect of the disposal at varying rates, of particular volumes and concentrations of pollutants;

(F) other possible locations and methods of disposal or recycling of pollutants including land-based alternatives; and

(G) the effect on alternate uses of the oceans, such as mineral exploitation and scientific study."

All of these criteria, except "F", were considered in the development of the Water Quality Control Plan for Ocean Waters of California (Ocean Plan), which was adopted and approved by the EPA pursuant to Section 303 of the Clean Water Act. The limitations of the Ocean Plan have been applied in all NPDES permits which have been issued to ocean dischargers since the Plan was first adopted in 1972. Therefore, these statutory criteria have been used in issuing the NPDES permit which is the subject of this petition.

Criteria "F" requires a consideration of other possible locations and methods of disposal or recycling of pollutants including land-based alternatives. The Project Report which was prepared for the SSLOCSD Clean Water Grants project reflects a

consideration of these alternatives.<sup>8/</sup> Therefore, the permit for SSLOCSD was issued in accord with the statutory criteria of Section 403(c). To ensure that all NPDES permits which are issued in the future to ocean dischargers are in accord with EPA's interim guidelines, alternate locations and methods of disposal or recycling must be considered by the Regional Boards either by review of the analysis which took place in the Clean Water Grants program or by other appropriate means.

We have reviewed the ocean dumping criteria which according to EPA's interim guidelines are to be applied wherever appropriate in issuing NPDES permits to ocean dischargers. Many of the constituents which are to be regulated under those criteria are already regulated via limitations which are equally as stringent in California's Ocean Plan. Many of the other constituents would only be found in trace amounts in normal domestic sewage and thus are not subject to regulation. Extensive data review and many factors led to our determination in the Ocean Plan of the substances which were most appropriate for regulation in order to protect the quality of the ocean waters off the State of California. We, therefore, do not believe it would be appropriate to in effect amend the Ocean Plan at this time to consider the regulation of several other constituents as suggested by the ocean dumping criteria. In accord with our conclusion, we find the NPDES permit for SSLOCSD to have been issued in compliance with EPA's interim guidelines for ocean discharge.

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8. SSLOCSD Wastewater Treatment Plant Improvements and Effluent Disposal Project, Project Report, March 1976, Chapter VII.

### III. CONCLUSION

Order No. 79-35 was appropriately adopted without the conditions proposed for inclusion by the petitioner. The Regional Board acted properly as a responsible agency to comply with the requirements of the California Environmental Quality Act. Finally, the permit was issued in accord with EPA's interim guidelines for ocean discharge.

### IV. ORDER

IT IS HEREBY ORDERED that Order No. 79-35 adopted by the California Regional Water Quality Control Board, Central Coast Region, is appropriate and proper, and the petition is hereby dismissed.

Dated: DEC 20 1979

/s/ Carla M. Bard

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Carla M. Bard, Chairwoman

/s/ William J. Miller

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William J. Miller, Vice Chairman

/s/ L. L. Mitchell

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L. L. Mitchell, Member

In 1975 a cease and desist order was issued. The SSLOCSD is currently in the construction phase of a Clean Water Grants project to construct a new outfall and to upgrade the reliability and consistency of wastewater treatment by certain improvements to the treatment plant. The new ocean outfall is designed to handle 4.7 mgd from SSLOCSD, and the improvements to the treatment plant are designed to upgrade 2.0 mgd of the treatment plant's existing 2.5 mgd of flow. (This is in accord with Clean Water Grant regulations which were in effect at the time this project was approved. These regulations established eligible capacity for purposes of grant funding for outfall improvements based on the projected population for 20 years in the future and for treatment plant improvements based on the projected population for 10 years in the future.) In accordance with the requirements of the California Environmental Quality Act (CEQA), an Environmental Impact Report (EIR) was prepared in 1976 for the proposed wastewater treatment plant improvements and effluent disposal project.

Pismo Beach, which is immediately adjacent to the SSLOCSD, has a treatment plant with a design capacity of 1.2 mgd. The offshore portion of its ocean outfall was destroyed by storms in 1969 and replaced by the U.S. Army Corps of Engineers in 1970. During the 1977/78 winter storms, Pismo Beach's ocean outfall was again destroyed. It has now been temporarily repaired; however, it is subject to possible failure at any time. Pismo Beach is therefore presently in the design phase of a Clean Water Grants project. During the facilities planning stage, consideration was given to several alternatives including a separate outfall for Pismo Beach

and reclamation. However, the most cost-effective and reliable project was found to be construction of a pump station and force main to transport Pismo Beach's effluent to the SSLOCSD ocean outfall. The ocean outfall is therefore presently being expanded to dispose of effluent from both SSLOCSD and Pismo Beach. In April 1979 Pismo Beach adopted a final EIR for the pump station and force main to transport its effluent to the joint ocean outfall.

SSLOCSD had already finalized its EIR when the decision was made to expand the outfall's capacity to include effluent from Pismo Beach. The total capacity of the joint outfall is 8.4 mgd which includes 4.7 mgd for SSLOCSD and 3.7 mgd for the projected population in Pismo Beach in the year 1999. SSLOCSD, acting as lead agency, apparently determined that the change in the project to expand the outfall's capacity did not warrant a second EIR or negative declaration; and no additional environmental documents were prepared.

The joint outfall is presently under construction, and the Pismo Beach force main to transport waste to the ocean outfall is being designed.

## II. CONTENTIONS AND FINDINGS

The petitioner has made extensive written submittals to the State Board relative to its pending appeal over the past several months. We will review and consider the major contentions raised in these submittals which we feel are dispositive of the issues raised by this petition.