STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of the UNITED STATES AIR FORCE for Review of Order No. 81-68 (NPDES Permit No. CA0048127), Central Coast Regional Water Quality Control Board. Our File No. A-301.	Order No. WQ 82-10

BY THE BOARD:

On September 11, 1981, the Central Coast Regional Water Quality Control Board (Regional Board) adopted Order No. 81-68 (NPDES Permit No. CA0048127) entitled "Waste Discharge Requirements for City of Lompoc Regional Wastewater Facility and Local Sewering Entities of Vandenberg Air Force Base and Park Water Company." The Order modified the City's existing NPDES permit to include: (a) responsibilities of local sewering entities, (b) a schedule for developing and implementing a pretreatment program, (c) National Pretreatment Standards, and (d) salt limits as required by State Water Resources Control Board (State Board) Order No. WQ 81-5.

On October 9, 1981, the State Board received a petition from the United States Air Force, Vandenberg Air Force Base (Vandenberg), objecting to its inclusion in the Regional Board order. On November 18, 1981, the State Board received an amendment to the petition from Vandenberg.

I. DISCUSSION

We will consider only one issue in this petition: whether it is proper to include Vandenberg in the waste discharge permit for the City of Lompoc Regional Wastewater Treatment Facility (Lompoc). For the reasons set forth below, we conclude that Vandenberg should not have been named in the permit.

Vandenberg maintains a collector system on its property which transports its sewage to Lompoc for treatment and disposal. This arrangement is contractual and provides, among other things, for various pretreatment requirements. So far as the record indicates, this agreement is the only contact between Vandenberg and Lompoc. Nevertheless, the Regional Board named Vandenberg in Lompoc's NPDES permit, basing its decision on our Order No. WQ 80-2 in the Pacific Grove appeal. Vandenberg's contention is that, because its only discharge is to a publicly owned treatment works (POTW), it is not a "discharger" under federal law and cannot be made the subject of National Pollutants Discharge Elimination System (NPDES) permit.

The applicable federal regulations were modified in 1980 to change the definition of a "discharge of a pollutant." The federal regulations, at 40 CFR 122.3, now say that the addition of pollutants into waters of the United States through pipes or sewers constitutes a "discharge" if the pipes or sewers lead to a privately owned treatment works or to no treatment works at all. By implication, if the pipes or sewers lead to a POTW, there is no separate discharge. The discussion of this definition in the Federal

Register (44 FR 32857) makes it clear that such was EPA's intended meaning. Since Vandenberg's collection system leads to a POTW, it appears that Vandenberg's contention is correct.

Our order in the Pacific Grove appeal dealt with a fundamentally different factual setting. There the petitioner was one of several local governmental entities which banded together in a joint powers agreement to create the sanitation district which would operate the treatment works. We determined that, based on a still earlier precedent from the Lake Tahoe area (Board Order No. WQ 78-8 involving the Tahoe-Truckee Sanitation Agency), it was proper to include "persons responsible for the conveyance of pollutants to a treatment facility as well as persons responsible for the treatment operation itself" in the discharge permit. It is clear from both of those orders that the petitioner's involvement as a participant in the formation of the regional treatment facility through a joint power's agreement was the critical factor in reaching such a conclusion. Such involvement was viewed as creating a joint responsibility and obligation to treat and dispose of wastes.

We see no reason to believe that the modification in the federal regulations was intended to, or does, affect entities like Pacific Grove whose participation in the formation of the regional facility forever colors the dealings between the two. Certainly Pacific Grove should not be considered a mere customer of the POTW it helped create. Its responsibilities to the total system are such that it was properly named in the permit. Vandenberg, on the other hand, had no direct involvement in the creation of Lompoc.

So far as the record reveals, the dealings between the two have been strictly at arm's length. Unless there are facts which do not appear on the record, and which indicate otherwise, we consider Vandenberg a customer contracting with Lompoc for a service.[1/]

Our order in the Pacific Grove appeal means simply this: A governmental entity which is involved in the collection and/or treatment of sewage and which joins together with other local entities to build a treatment facility, cannot divorce itself from the newly created entity for purposes of waste discharge requirements. That order should not be applied where an entity, governmental or otherwise, has nothing to do with the creation of the treatment facility, acquires no ownership or other proprietary interest in the facility, negotiates at arm's length with the plant for a contract to receive its sewage, is subject to pretreatment requirements, and delivers its sewage to the POTW for treatment. Such an entity is not a "discharger" and ought not to be named in an NPDES permit. In reaching this conclusion, we are not unmindful of the Regional Board's purposes in naming Vandenberg in the permit. We also understand that the Regional Board felt it was correctly following State Board direction as outlined in Order No. WQ 80-2.

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1. It is clear that pretreatment standards may and should be imposed on Vandenberg by Lompoc and that those standards are subject to review by the Regional Board. (40 CFR 403, 403.8). In light of this order, the Regional Board may wish to take a new look at the pretreatment standards for Vandenberg.

These concerns are at least partially offset by the following: (1) any bypasses or overflows from Vandenberg's collection system would be directly enforceable as discharges without a permit; (2) the conclusions of this Order are based on the unique facts presented and should be considered of limited precedential value; and (3) the contractual arrangement between Lompoc and Vandenberg authorizes Lompoc to regulate discharges into Vandenberg's system, inspect the system, and enforce its regulation through a cut-off of services.

Because we conclude that, based on the record before us, Vandenberg is not a "discharger," we have not considered the other issues raised in the petition. The Regional Board is at liberty to reconsider Vandenberg's inclusion in the permit based upon the factors discussed above. However, unless the Regional Board finds some factual basis for applying Order No. WQ 80-2 to Vandenberg, the permit should be modified to conform to this Order.

II. CONCLUSION

The facts contained in the record before us indicate that Vandenberg is a mere customer of the wastewater treatment facility owned and operated by Lompoc. It should not be considered a "discharger" under federal law and ought not to be included in the NPDES permit issued to Lompoc. Unless the Regional Board concludes that facts, not now in the record, indicate a less than arm's length relationship between Vandenberg and Lompoc, the permit should be modified to remove Vandenberg.

III. ORDER

IT IS HEREBY ORDERED that the Regional Board amend NPDES Permit No. CA0048127 to remove the petitioner as a named permittee.

DATED: August 19, 1982

ABSENT
Carla M. Bard, Chairwoman

/s/ L. L. Mitchell
L. L. Mitchell, Vice-Chairman

/s/ Jill D. Golis
Jill D. Golis, Member

/s/ F. K. Aljibury
F. K. Aljibury