

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of)
)
THE SANTA CLARA TRANSPORTATION AGENCY)
)
For Review of Order No. 87-129, NPDES)
Permit No. CA0029246 of the California)
Regional Water Quality Control Board,)
San Francisco Bay Region. Our File)
No. A-507.)
_____)

ORDER NO. WQ 88-2

BY THE BOARD:

On September 16, 1987, the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Board) adopted Order No. 87-129, NPDES Permit No. CA0029246. This order imposed waste discharge requirements for a dewatering system at an expressway undercrossing in the City of Palo Alto. The petitioner, Santa Clara Transportation Agency, owns and operates the dewatering system and was named as discharger. In its petition, submitted to the State Board on October 15, 1987, petitioner claims that Hewlett-Packard Company (Hewlett-Packard) as well as unidentified entities referred to as "Does 1-100" should have been named as dischargers in the order.

I. BACKGROUND

Petitioner owns and operates a dewatering system which continuously pumps ground water and surface stormwater from an expressway undercrossing in the City of Palo Alto. The dewatering system, which has been in operation since about 1959, prevents the undercrossing from being inundated by ground water seepage. It pumps approximately 350 gpm (gallons per minute) of ground water into the Matadero Canal which flows into San Francisco Bay.

During the course of ground water investigations at a Hewlett-Packard facility, which lies approximately 2,000 feet upgradient to petitioner's dewatering system, it was discovered that the dewatering system intercepts polluted ground water emanating from the Hewlett-Packard facility and other sources in the area.¹ Water samples taken at the pump station intake have shown volatile organic compounds (VOCs) in the following maximum concentrations: Trichloroethene (TCE) at 180 ppb (parts per billion), perchloroethene (PCE) at 82 ppb, trans-1,2-dichloroethene at 16 ppb, and 1,1,1-trichloroethene (TCA) at 13 ppb. As a consequence of these discoveries, the Regional Board adopted the NPDES permit which is the subject of this order.

II. CONTENTIONS AND FINDINGS

1. Contention: Petitioner contends that Hewlett-Packard and Does 1-100 (pending their identification) should be named as dischargers in the NPDES permit.

Finding: Discharges to ground water are not covered by the Clean Water Act and therefore may not be regulated under an NPDES permit. (Exxon Corporation v. Train 554 Fed.2d 1310 (5th Cir. 1977); Kelley v. United States 618 Fed. Supp. 1103 (W.D. Mich. 1985)). Since the Clean Water Act does not cover discharges to ground water, the Regional Board is not authorized to name Hewlett-Packard or any other ground water polluter under an NPDES permit. (Water Code Section 13377.)

¹ The petition states that the dewatering system is located downgradient from Hewlett-Packard and numerous other "high-tech and industrial industries". (Petition 2:5-7) It alleges that the ground water pollution comes from Hewlett-Packard and other sources in the area. (Petition 2:12-23) These other unidentified sources of the ground water pollution are referred to in the petition as "Does 1-100". (Petition 3:5-12)

2. Contention: Petitioner contends that the Regional Board should exercise its powers under the California Water Code to name Hewlett-Packard and all parties responsible for the ground water pollution discharged by the petitioner's dewatering system as parties responsible for compliance with Order No. 87-129.

Finding: Petitioner does not specify how the Regional Board is to hold these parties responsible. While Regional Board staff has identified Hewlett-Packard as a source of the ground water pollution,² it is not the only source. The petition concedes this in its allegations referring to Does 1-100. It is not the responsibility of the Regional Board to track down all possible contributors to the ground water pollution and apportion their share of the responsibility for treating a point source discharge. The courts provide a more appropriate forum for the petitioner to seek indemnity. (State Board Order No. 86-2)

Moreover, it is proper for the Regional Board to require petitioner to treat all pollutants in the dewatering system discharge, even if no pollutants were added by the petitioner. (Southern California Edison v. State Water Resources Control Board (1981) 116 Cal.App.3d 751, 172 Cal.Rptr. 306; 43 Ops.Atty.Gen. 302 (1964)).

² The Regional Board has adopted Order No. 87-27 which contains waste discharge requirements which require Hewlett-Packard to cleanup the portion of the ground water pollution plume on its property. Hewlett-Packard is also named in Cleanup and Abatement Orders Nos. 87-142 and 87-164 which require cleanup of part of the plume which has commingled with discharges by other parties. Petitioner does not challenge the provisions of Orders Nos. 86-27, 87-142 or 87-164.

III. CONCLUSIONS

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

1. The Regional Board does not have the authority to name Hewlett-Packard and Does 1-100 as dischargers in Order No. 87-129, NPDES Permit No. CA0029246.

2. It is appropriate and proper for the Regional Board to decline to use its power under the California Water Code to name Hewlett-Packard and Does 1-100 as parties responsible for compliance with the requirements of Order No. 87-129.

IV. ORDER

IT IS HEREBY ORDERED that the petition is denied.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on March 17, 1988.

AYE: W. D. Maughan
D. E. Ruiz
E. H. Finster
E. M. Samaniego
D. Walsh

NU: None

ABSENT: None

ABSTAIN: None



Maureen Marche
Administrative Assistant to the Board

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