

**STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD**

In the Matter of the Petitions of)
WILLIAM VANDER WOUDE)
and)
PETE VERBOOM)
For Review of Monitoring Requirements)
of the California Regional Water)
Quality Control Board, San Diego)
Region. Our Files Nos. A-656 and)
A-656(a).)

ORDER NO. WQ 91-06

BY THE BOARD:

The San Diego Regional Water Quality Control Board (Regional Board) adopted a technical change order (T-5) for each dairy in the San Diego Region on December 4, 1989. The order required the monitoring of ground water under the dairies through the use of properly designed and placed wells and chemical analysis of the water. Timely petitions were received from William Vander Woude and Pete Verboom. Because all dairies in the Region were similarly affected and because of requests received from the San Diego Milk Producers Council, Regional Board and the State Water Resources Control Board (State Board) staff agreed that the two petitions would be considered as representing the interests of all dairies in the Region.

We considered a proposed order at our October 1990 workshop. Based on that discussion, we asked staff to meet with the petitioners and assess whether the matter could be settled

without an order from us. Staff traveled to San Diego and met with a number of local dairy operators as well as Regional Board staff but no basis for compromise could be found. We now take this matter up on our own motion.

After our June workshop on this order, Regional Board staff met with petitioners and other representatives of the dairy industry and arrived at an understanding about what monitoring will be required over the next five years. Most of the dairies have at least two existing wells available to monitor the ground water. Each of them, as well as those with only one well, will conduct a monitoring program while those dairies without wells will await the results of the program. All new dairies will be required to comply with the existing order.

I. BACKGROUND

Dairies have been of concern to the Regional Board for at least twenty years. A 1975 staff report on "Dairy Farm Waste" called for ground water monitoring to determine the effects of dairies on beneficial uses of ground water. However, although the Regional Board included ground water and root zone monitoring when waste discharge requirements were adopted for the dairies in 1976, no attempt was made to enforce those provisions. (The record also indicates that earlier waste discharge requirements contained some general ground water monitoring provisions but there is no evidence that anything was ever done to enforce them either.)

promulgated regulations which required management of confined animal facilities. (Title 23, California Code of Regulations, Section 2510, et seq.-"Chapter 15"). Those regulations mandated the control of wastewater on site and provided that a Regional Board could impose a monitoring program as a condition of receiving waste discharge requirements if the Regional Board believed it was justified.

The second event of significance was the adoption by the Regional Board of an amendment to its water quality control plan involving dairy policy. That amendment (87-71) was adopted by the Regional Board on November 16, 1987. The State Board reviewed the amendment, as is required by law, and adopted its own resolution (No. 88-35) conditionally approving most of the Regional Board policy. Most significant in the State Board resolution was paragraph 2(e) which stated:

"[The Regional Board shall] require ground water monitoring for all dairies which overlie ground water basins having existing or designated beneficial uses or objectives for nitrates or salts which could be exceeded. Such a monitoring program will provide for a timely indication of any potential occurrences of exceeding water quality objectives in the aquifer underlying the discharge and downgradient of the discharge, not to exceed 0.5 miles from the discharge area."

The State Board resolution specifically deleted a portion of the Regional Board amendment which provided:

"Waste management control measures must be implemented by existing and new dairies that are environmentally effective and economically achievable;

that is, waste management control measures should be required only where ground water quality protection or improvement would justify the expenditure."

The State Board found that the language in that paragraph was inappropriate because it implied that the Regional Board "would allow the violation of Basin Plan objectives if the expenditure for waste management control measures is not justified."

Technical change order (T-5) was added to each dairy's waste discharge requirements by vote of the Regional Board on December 4, 1989. T-5 requires that each dairy submit a proposal for ground water monitoring which is designed and certified by a registered geologist or registered civil engineer. The proposal must provide for enough wells to give an adequate background sample and to measure the downgradient water quality. The wells must be properly screened and located so as to provide an accurate picture of the ground water quality in the area and the effects of the dairy on it. T-5 provides that existing wells may be used but only if they are adequate for the purposes of the monitoring program. The ground water is to be monitored for eight characteristics including nitrate, dissolved solids, and electrical conductivity. Monitoring reports must be made to the Regional Board on an annual basis.

As was noted above, Regional Board staff has agreed to some modifications of the monitoring program. Under the compromise, only dairies with wells will conduct the required monitoring. This will go on for five years. At the end of that time, the Regional Board will determine what further monitoring

(including, but not limited to, the drilling of more wells) will be necessary and what other regulatory or enforcement actions might be appropriate.

II. CONTENTIONS AND FINDINGS

Contention: Petitioners and their trade association contend, for a variety of reasons, that it is not fair for the Regional Board to impose the original monitoring program on them. In sum, the reasons they give are: it is too expensive, other regions do not require it, and there are no set guidelines for this type of monitoring.

Findings: The Regional Board has acted entirely in accordance with the regulations adopted by this Board (Chapter 15) and with the resolution passed by this Board approving the amendment to the water quality control plan (Resolution No. 88-35).

It is clear from a reading of relevant portions of Chapter 15 that the monitoring of dairy operations is an appropriate function of any Regional Board. Whenever a Regional Board concludes that either surface or ground water may be adversely affected by dairy operations, it is reasonable for that Regional Board to require the dairy operator to take steps to assure that no unacceptable impacts occur. Monitoring is an integral part of most Chapter 15 regulatory actions.

In this case we have more than Chapter 15 to consider. We reviewed and approved the dairy policy when the Regional Board

added it to the water quality control plan in 1987. We found that proposed policy to be too weak and conditioned our approval on two changes. We ordered the removal of language which placed too much emphasis on economic considerations and we specifically directed the Regional Board to implement monitoring.

The only open question is whether or not the Regional Board has determined that each dairy actually overlies a ground water basin which has existing or designated beneficial uses that will be affected by dairy discharges or which has established objectives for nitrates or salts that could be exceeded. If any of those factors is properly found to exist, a monitoring program must be imposed. To do otherwise violates the water quality control plan.

State Board staff has reviewed the waste discharge requirements for every dairy in the San Diego Region. It is clear from the record that the Regional Board has made a sufficient showing with regard to each dairy and that each falls within the coverage of the amendment to the water quality control plan. If there is evidence that a given dairy does not overlie ground water with beneficial uses or salt objectives, that evidence should be presented to the Regional Board. No such evidence has been produced in the context of these petitions.

Arguments about other regions and their practices or about uniformity in statewide procedures reflect a misunderstanding of the Regional Board system. The Chapter 15 regulations establish minimum statewide standards for dairies and

other confined animal facilities. However, the regulations explicitly provide that Regional Boards may impose additional provisions. (23 Cal. Code. of Regs. 2560(c).) In addition, the regulations specifically authorize Regional Boards to require monitoring programs. (23 Cal. Code of Regs. 2565.) Precise uniformity is not contemplated in the statutory scheme which set up the State and Regional Boards. We strive for some level of consistency, but we begin with the basic premise that different areas of the state have different problems for which different solutions are appropriate.

What one region does may be helpful to another region dealing with similar problems but it is not binding. We have set up a statewide task force whose purpose is to assist Regional Boards in achieving some measure of consistency when dealing with dairy issues. But while consistency is a laudable goal, it will not be required for many of the reasons already stated. We cannot say that the San Diego Region has acted improperly merely because another region has taken a different approach to dealing with dairies.

The recent agreement between Regional Board staff and the dairy representatives is a reasonable compromise in the implementation of the Basin Plan and Chapter 15. Our only concern is that the Regional Board not be forced to wait the full five years if initial monitoring discloses the existence of a significant water quality problem. With the understanding that the Regional Board can and will take any appropriate enforcement

action, which the monitoring shows to be necessary, we find that the proposed monitoring plan, as amended, fulfills the obligations of the Regional Board.

III. CONCLUSION

We find nothing improper in the actions of the Regional Board which implement a dairy ground water monitoring program. Indeed, their actions are entirely consistent with the direction this Board gave the Region in our Resolution No. 88-35. This approach is also consistent with Chapter 15. The Regional Board should consider any evidence which is presented concerning specific sites and whether they actually overlie ground water. Nothing in the record before us addresses that issue.

IV. ORDER

These petitions are hereby dismissed.

CERTIFICATION

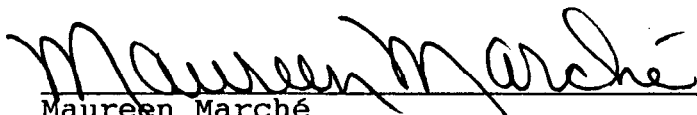
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 20, 1991.

AYE: W. Don Maughan
 Eliseo M. Samaniego
 John Caffrey

NO: None

ABSENT: Edwin H. Finster

ABSTAIN: None



Maureen Marché
Administrative Assistant to the Board

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Two things happened which led to the amendments which are the subject of these petitions. First, the State Board

promulgated regulations which required management of confined animal facilities. (Title 23, California Code of Regulations, Section 2510, et seq.-"Chapter 15"). Those regulations mandated the control of wastewater on site and provided that a Regional Board could impose a monitoring program as a condition of receiving waste discharge requirements if the Regional Board believed it was justified.

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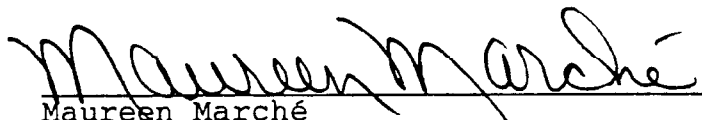
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AYE: W. Don Maughan
 Eliseo M. Samaniego
 John Caffrey

NO: None

ABSENT: Edwin H. Finster

ABSTAIN: None



Maureen Marché
Administrative Assistant to the Board

