

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Petition for Review  
of Order No. 72-18 of the California  
Regional Water Quality Control Board,  
San Diego Region -- Regulation of  
Discharges from Houseboats on or in  
the Waters of San Diego Bay

Order No. 72-16

On June 9, 1972, the San Diego Unified Port District petitioned the State Water Resources Control Board to review Order No. 72-18 of the San Diego Regional Water Quality Control Board.

The State Board, having considered the petition and the records of the regional board which concern petitioner's contentions, finds:

1. On May 22, 1972, the regional board adopted Order No. 72-18 after hearing testimony from all interested persons. The order adopts a regulation for control of discharges of waste from houseboats on or in the waters of San Diego Bay and directs that the regulation be transmitted to the San Diego Unified Port District and the City of Coronado for enforcement pursuant to Water Code Section 13906.

The action of the regional board was taken pursuant to Chapter 11 of Division 7 of the Water Code (Secs. 13900 - 13908). Briefly summarized, this chapter directs each regional board to determine areas in which discharges from houseboats are inadequately regulated by local ordinance. The boards are then required to notify each affected city and county and to recommend provisions necessary to control the discharges. If a

city or county fails to adopt an appropriate ordinance within 120 days, the regional board is authorized to adopt regulations "necessary for the control of discharges of waste from houseboats for the area designated." Such regulations are to be enforced by the city or county and "have the same effect as if adopted as a city or county ordinance." Actions of the regional boards are subject to review by the State Board.\*

In Order No. 72-18, the regional board found that San Diego Bay is an area where the discharge of waste from houseboats is inadequately regulated by local ordinance and that neither the San Diego Unified Port District nor the City of Coronado had adopted an ordinance to regulate the discharge of wastes from houseboats within 120 days of receipt of the regional board's notice pursuant to Water Code Section 13903.

2. The grounds for the petition and this Board's comments are:

(a) The action of the regional board is discriminatory in that it does not treat contributors of human waste in San Diego Bay equally and is not rationally calculated to correct sewage discharges to San Diego Bay. The distinction between discharges from houseboats and from other vessels has no rational connection with the evil to be corrected (sewage discharges) because of the relatively miniscule volume of discharges from houseboats compared with the hundreds of thousands of gallons of raw sewage discharged into San Diego Bay daily by other vessels.

Chapter 11, Division 7 of the Water Code (Water Code Sections 13900-13908) provides only for the regulation of discharges from houseboats on or in the waters of the State. Implicit in this statute is the legislative determination that discharges from house-

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\* A complete copy of Chapter 11 is attached as Appendix A.

boats should be regulated through a different procedure than discharges from other types of vessels. Section 13901 defines "houseboat" generally as a watercraft "which is designed or fitted out as a place of habitation and is not principally used for transportation." The fact that there may be many other types of vessels which may cause larger discharges of waste than houseboats is irrelevant, since the regional board, when acting pursuant to Section 13906, may consider the regulation of discharges only from "houseboats" as that term is defined in Section 13901. Thus, the regulation, when taken within the context of the authorizing statute, Section 13906, is not discriminatory since it applies to all houseboats in the San Diego Bay.

Order No. 72-18 was not intended by the regional board to correct all sewage discharges to San Diego Bay. The purpose of the order, as stated in its heading, is limited to the "Regulation of Discharges from Houseboats on or in the Waters of San Diego Bay" as authorized by Water Code Section 13906. The regulation is rationally calculated to achieve this purpose since Section 3 of the regulation requires that all houseboats equipped with a marine sanitation device must, by July 1, 1973, also be equipped with a sufficient holding tank or that the marine sanitation device be connected directly to a sanitary sewer system.

(b) The definition of "what is a houseboat" is vague and uncertain. The standard is too vague and subjective to form the basis for a charge of criminal conduct and, therefore, is patently unenforceable.

The definition of "houseboat" in Section 1(A) of the regulation is taken directly from Chapter 11, Division 7 of the Water Code. When adopting regulations pursuant to Chapter 11, the

regional board may use only the definition of "houseboat" found in that chapter. The United States Supreme Court has upheld the use of language in a criminal statute comparable to "not principally used for transportation." See Joseph E. Seagram & Sons, Inc. v. Hostetter, 384 U.S. 35 (1966). In that case, the claim of vagueness was centered upon the term "principal or substantial" in the statutory definition of "related person" which included any person "the exclusive, principal or substantial business of which is sale of a brand or brands of liquor purchased from such brand owner or wholesaler designated as agent." In another case, a federal district court held that "principally" was synonymous with mainly, chiefly, or in the main, when used in a policy provision covering the use of automobiles "used principally in the dealers operations" and was not void for vagueness Hartford Accident and Indemnity Company v. Casualty Underwriters, 130 F. Supp. 56.

(c) There is no clear standard in the definition of the term "marina" to permit an administrative official to include or exclude a particular facility "as not necessary for the purposes of this regulation."

Section 1(B) of the regulation defines "marina" and excludes from the definition "such facilities as may be designated by the Harbor Master as not necessary for the purposes of this regulation." The only other reference to marinas is in Section 5, which provides that each marina or anchorage area shall provide a permanent holding tank pump-out facility or equivalent services for use by all houseboats at said marina or anchorage area.

Section 1(B) of the regulation does not include any guidelines for the Harbor Master to follow in determining what facilities should be excluded nor are the purposes of the regulation described. In these respects the regulation is vague and indefinite and should be revised. The purpose of the regional board can best be accomplished by deleting from Section 1(B) the provision for exclusion of facilities designated by the Harbor Master and adding a provision in Section 5 authorizing the Harbor Master to exclude certain marinas and anchorage areas from the requirements of that section. The provision should include appropriate guidelines for the Harbor Master to follow in exercising this authority.

(d) The regulation has no standard by which law enforcement personnel can measure the sufficiency of the various containment devices.

The definition of holding tank as set out in Section 3(A) of the regulation contains the following standard in regard to the sufficiency of containment devices: "designed to retain all human body wastes deposited in the marine sanitation device until such time as said sewage can be discharged into a sanitary sewer system." Such a standard is sufficiently definite to permit law enforcement personnel to measure the sufficiency of various containment devices which may qualify as "holding tanks" within the meaning of Section 3(A).

3. Sections 7 and 8 of the regulation provide specifically for penalties for violation of certain sections of the regulation. Under Water Code Section 13906, the regional board may adopt a regulation necessary for the control of houseboat discharges so as to carry out the general purpose of that code section. However, the regional board may not also prescribe the penalty for violation of such a regulation since that is a purely nondelegable legislative function. People v. County of El Dorado, 5 C.3d 480, 487 P.2d 1193; Port of Eureka v. Excelsior Redwood Company, 88 Cal. 491, 26 P. 375 (1891). The Legislature, however, has prescribed the penalties for violation of the regional board's regulation in Section 13906. That section states that the regulation "shall have the same force and effect as if adopted as a city or county ordinance." This was intended by the Legislature to mean that the regulation adopted by the regional board would have the same penalties as those for violation of any ordinance, adopted by the city or county, which does not prescribe a specific penalty. Violation of any ordinance of the San Diego Unified Port District is a misdemeanor (Harbors and Navigation Code, Appendix 1, Sec. 59) for which the penalty is imprisonment in the county jail for not more than six months or a fine of not more than \$500, or both (Penal Code Sec. 19). We are advised that the City of Coronado municipal code has similar provisions.

Sections 7 and 8 of the regulation should be deleted. A new Section 7 should be added, entitled "Penalties", to read substantially as follows:

"Penalties for violation of this regulation shall

be the same as for violation of a local ordinance which does not specify a penalty."

IT IS HEREBY ORDERED that Order No. 72-18 be remanded to the California Regional Water Quality Control Board, San Diego Region, for further action consistent with this order and that in all other respects the petition of the San Diego Unified Port District be denied.

Adopted as the order of the State Water Resources Control Board at a meeting duly called and held at Los Angeles, California.

Dated: August 3, 1972

STATE WATER RESOURCES CONTROL BOARD

## APPENDIX A

### CHAPTER 11. DISCHARGES FROM HOUSEBOATS ON OR IN THE WATERS OF THE STATE

13900. The Legislature finds and hereby declares that discharges from houseboats in or on the waters of the state constitute a significant source of waste as defined in Section 13050; that discharges of waste from houseboats in or on the waters of the state may impair the beneficial uses of the waters of the state to the detriment of the health, safety, and welfare of the people of the state; and that the discharges of waste from houseboats are not adequately regulated. The Legislature therefore declares that the people of the state have a primary interest in the coordination and implementation of the regulation of discharges of waste from houseboats on or in the waters of the state.

13901. As used in this article, "houseboat" means a watercraft or industrial or commercial structure on or in the waters of the state, floating or nonfloating, which is designed or fitted out as a place of habitation and is not principally used for transportation. "Houseboat" includes platforms, and waterborne hotels and restaurants. "City or county" means any city, county, city and county, or port authority.

13902. Each regional board shall investigate its region to determine areas in which discharges of waste from houseboats are inadequately regulated by local ordinance.

13903. Each regional board shall notify each affected city or county, the State Department of Health and the Department of Navigation and Ocean Development \* of areas of inadequate regulation by ordinance of discharges of waste from houseboats and shall recommend provisions necessary to control the discharges of waste from houseboats into the waters.

13904. Each such affected city or county shall within 120 days of receipt of the notice from the regional board, adopt an ordinance for control of discharges of waste from houseboats within the area for which notice was given by the board. A copy of such ordinance shall be sent to the regional board on its adoption and the regional board shall transmit such ordinance to the state board, the State Department of Health and the Department of Navigation and Ocean Development.

13905. Such city or county ordinance shall take effect 60 days from the date of adoption by the city or county, unless the regional board holds a public hearing on the matter and determines that the city or county ordinance is not sufficiently restrictive to protect the quality of the waters affected. If the board makes such a determination, it shall so report to the affected city or county and also recommend the ordinance, or modification of the city or county ordinance, which it determines is necessary.

13906. If a city or county fails to adopt an ordinance controlling discharges of waste from houseboats within 120 days of receipt of the regional board's notice pursuant to Section 13903, or fails to adopt or modify such ordinance in the manner determined as necessary by the regional board pursuant to Section 13905, within 90 days of receipt of the regional board's notice, the regional board may adopt regulations necessary for the control of discharges of waste from houseboats for the area designated. Such regional board regulations shall take effect 30 days from the date of their adoption and shall be enforced by the city or county and have the same force and effect as if adopted as a city or county ordinance.



13907. Any action, report, determination, or regulation taken or adopted by a regional board, or any failure of a regional board to act may be reviewed by the state board, and shall be reviewed by the state board on the request of any affected city or county. The state board has all powers as to the review of action or inaction of a regional board under this article as it has to other action or inaction of a regional board, including all powers granted to a regional board to initially determine areas in which discharges of waste from houseboats are inadequately regulated by local ordinance and to adopt regulations when a city or county fails to do so, if the state board finds that appropriate action has not been taken by a regional board. Any action of a regional board under this chapter or any city or county ordinance affected by the review of the state board shall have no force or effect during the period of the review by the state board.

13908. No provision in this chapter and no action thereunder by a regional board or the state board is a limitation on the power of a city or county to adopt and enforce additional ordinances or regulations not in conflict therewith imposing further conditions, restrictions, or limitations with respect to the discharges of waste from houseboats.