

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petitions of Save  
San Francisco Bay Association,  
James L. Griffin, the Sierra Club,  
Northern California Regional Conserva-  
tion Committee, and the Department of  
Fish and Game for Review of Order  
No. 73-56 of the California Regional  
Water Quality Control Board,  
San Francisco Bay Region

Order No. WQ 74-9

BY THE BOARD

On September 25, 1973, the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Board) adopted Order No. 73-56 prescribing waste discharge requirements for the disposal of dredge spoil from the Alameda Naval Air Station by the U. S. Army Corps of Engineers.

Save San Francisco Bay Association by its President, William E. Siri, and James L. Griffin filed timely petitions requesting that the State Water Resources Control Board (State Board) review the action of the Regional Board. The Department of Fish and Game filed a request that the State Board, on its own motion, review the action of the Regional Board.

On October 21, 1973, the Sierra Club, Northern California Regional Conservation Committee, filed its petition requesting review of the action of the Regional Board. This petition was incomplete and the petitioner was given until November 20, 1973, to file an amended petition. No amended petition having been filed, the petition is dismissed pursuant to Title 23, Section 2051, California Administrative Code.

On April 18, 1974, the State Board adopted Order No. WQ 74-7 which dismissed as moot the petitions of Save San Francisco Bay Association, James L. Griffin and the Department of Fish and Game on the ground that dredging operations at the Alameda Naval Air Station, including disposal of dredged spoils, had been completed. Subsequently, the State Board has been advised by the Regional Board that the dredge operations at Alameda Naval Air Station have not yet been completed. Therefore, the State Board, on its own motion, has determined to rescind Order No. WQ 74-7 and to reconsider the petitions of Save San Francisco Bay Association, James L. Griffin and the Department of Fish and Game on the merits.

I. BACKGROUND

Order No. 73-56 permits the U. S. Army Corps of Engineers to dredge approximately 1,500,000 cubic yards of sediment from the Alameda Naval Air Station ship channel, turning basin and berthing area, and to dispose of the spoil at the Alcatraz Island disposal site located in San Francisco Bay.

Order No. 73-56 was adopted by the Regional Board after extended hearing on the proposed discharge. The testimony presented to the Regional Board can be succinctly summarized as follows:

1. All of the sediments involved are, to some degree, classifiable as polluted with organic material and heavy metals under existing criteria utilized by the Regional Board. The most critical pollutants involved are lead and mercury.

With respect to lead, 62 percent of sediment samples exceeded allowable criteria by a factor of 6 to 300 percent. With respect to mercury, 15 percent of sediment samples exceeded the allowable criteria of 1.0 ppm by a factor of 10 to 40 percent. In other words, the maximum sediment sample indicated mercury of 1.4 ppm. Staff indicated that the anticipated degree of pollution from the discharge was "quite great".

2. The criteria utilized by the Regional Board to determine whether dredge materials are polluted are the "Jensen Guidelines". Considerable controversy has arisen over the appropriateness of the criteria set forth in the "Jensen Guidelines" and, at the time of the hearing the Environmental Protection Agency (EPA) was developing interim criteria for dredge spoils which might vary considerably from the criteria set forth in the "Jensen Guidelines". While EPA did not participate in the hearing, the record shows that its representatives had verbally indicated that they did not object to the proposed disposal at Alcatraz Island.

3. Refusal to permit the discharge proposed allegedly would have serious social and economic impacts, including the following:

- (a) If the dredging operation was not commenced by late 1973, natural shoaling would continue unabated, eventually closing the channel and piers to vessel traffic, and, in effect, closing the port facilities at the Alameda Naval Air Station.

- (b) Closing of the channel and berthing facilities would create serious misalignment of the Pacific Fleet of the United States.
- (c) Closure of the port would directly affect approximately 14,000 port personnel and involve an estimated loss of over \$25 million.
- (d) Closure of the port would affect a minimum of 24,000 people in the Bay Area communities and substantial reduction of civilian manpower in shore-based activities supporting port activities would result.
- (e) Carrier movements scheduled in November and December 1973 require the proposed dredging activities.

4. No land disposal facilities are presently available in the immediate vicinity which are large enough to accommodate 1,500,000 cubic yards of dredged spoils.

5. Present funds available for the dredging operation amount to \$1,600,000. The cost of deep water disposal would amount to approximately \$4,020,000. The cost of land disposal, assuming that available land could be found, would amount to approximately \$5,475,000.

6. The Regional Board policy on regulation of dredged spoil disposal in the San Francisco Bay Region (Resolution No. 72-15) generally requires polluted spoils to be disposed of in land disposal sites approved by the Regional Board. The

policy, however, also provides that polluted spoils may be discharged at aquatic sites approved by the Regional Board after a weighing of the degree of pollution involved and the community values of the project, and if the project proponent can demonstrate that (1) land disposal is not feasible, and (2) the project is essential and failure to proceed with the project will result in severe economic and social damage, and (3) additional funds which would permit less damaging disposal are not available. The policy states that it is not intended that a claim of lack of available funds will be accepted more than once.

7. The Department of Fish and Game, the U. S. Bureau of Sport Fisheries and Wildlife, and the National Marine Fisheries Service of the U. S. Department of Commerce all opposed disposal of the spoils at Alcatraz Island and recommended disposal either on land or in the ocean beyond the 100 fathom line.

At the conclusion of the hearing, the staff of the Regional Board recommended against the proposed disposal at Alcatraz Island on the basis that the probable degree of pollution outweighed all other considerations.

Since the adoption of Order No. 73-56 on September 25, 1973, revised interim criteria for dredge spoils have been developed by EPA. On October 10, 1973, Region IX of the Environmental Protection Agency issued new preliminary Dredge Spoil

Disposal Criteria (DSDC). The DSDC are the regional office interpretation and implementation of the Ocean Dumping criteria adopted pursuant to Section 102(a) of the Marine Protection, Research and Sanctuaries Act of 1972 (P.L. 92-532). The DSDC will be used to evaluate dredge spoil disposal for inland navigable waters until guidelines are published pursuant to Section 404(b) of the Federal Water Pollution Control Act of 1972 (P.L. 92-500). The DSDC contain sediment classification, elutriate analysis, bottom sediment analyses and specific dredge spoil disposal site criteria for San Francisco Bay area sites including Alcatraz Island. The DSDC were not considered by the Regional Board in the adoption of Order No. 73-56.

Recent information from the Regional Board, based on discussions with the U. S. Army Corps of Engineers, indicates that while dredging of the turning basin and entrance channel is complete, two "hot spots" (areas containing highly polluted sediment samplings) were not dredged. Further, the decision whether or not to remove these hot spots has not yet been made, but if the Navy elects to so proceed, \$800,000 is available for additional dredging and spoil disposal on this portion of the project.

## II. FINDINGS

The basic complaint levied against the Regional Board in connection with the adoption of Order No. 73-56 is a contention that the Regional Board allowed purely economic considerations to override necessary protection of water quality. We have carefully reviewed the transcript of the hearing before the Regional Board, and, in our estimation, this complaint is not supported by the record before us.

The policy of the Regional Board in dealing with disposal of dredged spoil in San Francisco Bay requires the Regional Board to weigh the anticipated degree of pollution from the proposed discharge against the value and necessity of the proposed discharge. One of the factors which the Regional Board will weigh is the probability of severe economic damage if the dredging project is not permitted to go forward. Consideration of this aspect of a proposed dredging project is appropriate. However, it is clear that severe economic damage is only one of the factors which is to be considered in implementation of the policy.

The actual difference in cost between disposal of the dredged spoils at Alcatraz Island, as opposed to land disposal or deep water disposal, while substantial, was obviously of negligible importance in the decision of the Regional Board. Regional Board discussions do not focus at all on this aspect of the economics of the situation. Had difference in disposal costs been the sole area of consideration, we have no doubt that the Regional Board would have prohibited disposal at Alcatraz Island.

Many of the considerations which did have an obvious impact on the determination of the Regional Board, while partially expressed in terms of economics, in fact far transcend a simple question of economics. For example, the fact that closure of the port facilities would directly affect approximately 14,000 ship personnel at a cost over \$25 million may sound like an economic

consideration. However, in fact, this statistic encompasses a probable range of social impacts which will in reality far transcend definition in economic terms.

It is readily apparent from the transcript that social considerations of a non-economic nature weighed more heavily upon the Regional Board than did purely economic considerations. Probable serious misalignment of the Pacific Fleet as a result of port closure involves an area of social concern and national defense implications which cannot be measured in economic terms.

However, as noted previously, since the adoption of Order No. 73-56, Region IX of the Environmental Protection Agency has issued new preliminary Dredge Spoil Disposal Criteria (DSDC). The DSDC vary considerably from the "Jensen Guidelines" used by the Regional Board. In view of this new criteria, the fact that the remaining sediments may be highly polluted, and the apparent doubt concerning dredging of the "hot spots" remaining, we find that the Regional Board should reconsider the remaining dredged spoil disposal in light of the EPA DSDC. The Regional Board policy with respect to dredged spoil disposal requires the Board to consider EPA guidelines and criteria regarding pollution of sediments. While the Board did not have the DSDC available to it when considering this matter, we find that it should consider them at this time in connection with the question whether further dredging is appropriate.



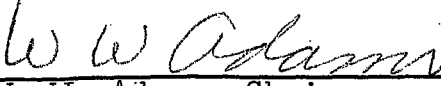
III. CONCLUSIONS

Having considered the contentions of petitioners and the record before us, we conclude that Order No. WQ 74-7 should be rescinded, and that Order No. 73-56 should be remanded to the Regional Board for further consideration in light of the views expressed herein.

THEREFORE IT IS ORDERED that:

1. Order No. WQ 74-7 be, and it is, rescinded.
2. Order No. 73-56 be, and it is set aside, and the matter is remanded to the Regional Board for further consideration at the earliest practicable time in light of the views expressed herein.

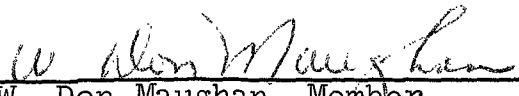
Dated: June 20, 1974

  
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W. W. Adams, Chairman

See "Concurring Opinion" (attached)  
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Ronald B. Robie, Vice Chairman

  
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Roy E. Dodson, Member

See "Concurring Opinion" (attached)  
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Mrs. Carl H. (Jean) Auer, Member

  
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W. Don Maughan, Member

CONCURRING OPINION  
OF  
BOARD VICE CHAIRMAN ROBIE AND MEMBER AUER

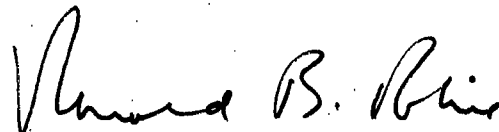
We concur in the Board's order remanding this matter to the Regional Board for further consideration before dredging resumes. This appeal is a good example of what has been a continuing controversy over waste discharge requirements for dredging activities by the U. S. Corps of Engineers. For some period of time the Corps of Engineers has opposed stringent controls on dredging activities in the Bay Area on the dual grounds of inadequate federal funding and threats of dire economic and social consequences to national defense, security, and the people of the Bay Area. (See Paragraphs I(3) and (5) of the Board's order.)

It is especially distressing that such tactics,<sup>1/</sup> including a disregard for the environmental well-being of those of the Bay Area, comes from an agency of the Federal Government which under the law is charged with protecting and enhancing the environment of the nation in its activities. [Zabel v. Tabb, 430 F.2d 199 (5th Cir. 1970) cert. denied, 401 U.S. 910 (1970)].

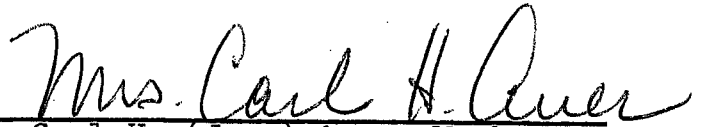
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<sup>1/</sup> Consider, for example, the testimony of the District Engineer, Col. Lammie: "As I forward a supplemental fund request for \$519,000.00 for further reference on our dredge study for fiscal year '74, a request which is on my desk right now, I would like to add a paragraph pointing out that in recognition of the efforts of the Corps on the dredge disposal study, realistic policies are being applied by the regional board pending the promulgation of definitive federal criteria." (RT 15, emphasis added.)

There is no question of the toxic nature of the materials involved. The Regional Board, upon considering the waste discharge requirements for the remaining dredging activities, should recognize the outlandish claims of the Corps of Engineers for what they have been proven to be and direct that further activities of the discharger be carried on in a manner consistent with the statutory mandate of the Porter-Cologne Act.



Ronald B. Robie, Vice Chairman



Mrs. Carl H. (Jean) Auer, Member