

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of  
Mt. View Sanitary District for  
Review of Order No. 74-134 (NPDES  
Permit No. CA0037770), California  
Regional Water Quality Control Board,  
San Francisco Bay Region.

Order No. WQ 76-9

BY THE BOARD:

On November 1, 1974, the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Board) adopted Order No. 74-134 (NPDES Permit No. CA0037770) prescribing waste discharge requirements for the Mt. View Sanitary District (petitioner). Pursuant to Water Code Section 13320, the petitioner filed a petition with the State Water Resources Control Board (State Board) on November 29, 1974, seeking review of Order No. 74-134 and requesting a hearing. Petitioner submitted an amended petition dated December 27, 1974.

By a letter dated May 1, 1975, the petitioner was advised that the issues raised by its petition would be decided upon the record without a hearing.

I. BACKGROUND

The petitioner operates a municipal wastewater treatment plant which provides secondary treatment. The plant is located about a mile east of the City of Martinez and adjacent to Hwy. 680. The secondary effluent is discharged into Peyton Slough which is tributary to Suisun Bay about 1.5 miles from

the point of discharge. The sludge from the plant is discharged to an on-site drying bed.

In recent years the water level in Peyton Slough has been controlled by tide gates and pumps, which were installed by the Contra Costa County Mosquito Abatement District. At high tide the tide gates keep the water of Suisun Bay from entering Peyton Slough and at the same time pumps discharge the waters in Peyton Slough to Suisun Bay. At low tide the waters in Peyton Slough are discharged to Suisun Bay through a culvert and tide gate.

On June 4, 1971, the Regional Board adopted an Interim Water Quality Control Plan for the San Francisco Bay Basin which became effective upon the State Board's approval on June 30, 1971, in Resolution 71-20. This Plan provides for a prohibition against the discharge of sewage-bearing wastewater to nontidal waters, but authorizes the Regional Board to make exceptions for reclamation projects, or where an alternative disposal site is not available.

Since Order No. 74-134 finds that Peyton Slough is nontidal, it implements the above prohibition in provision D(2) which states:

"Discharge of Waste No. 001 [secondary effluent] to the nontidal portion of Peyton Slough is prohibited. An exception to this prohibition will be considered by the Regional Board if the discharger can demonstrate to the Board's satisfaction that an alternative program such as reclamation for marsh enhancement would be environmentally beneficial." [Emphasis added.]

## II. CONTENTIONS AND FINDINGS

The contentions of the petitioner and our findings relative thereto are as follows:

1. Contentions: The action of the Regional Board in prohibiting discharges of secondary effluent to Peyton Slough was improper because Peyton Slough is "tidal" and therefore not subject to the prohibition contained in the Water Quality Control Plan. Moreover, the Regional Board's action is improper because the prohibition is vague as a result of the unresolved question of whether Peyton Slough, at the point of discharge, is tidal, and because the exception to the prohibition can only be granted upon a showing of environmental benefit "to the Board's satisfaction". Finally, the Regional Board's action of adopting the prohibition was improper because the prohibition is generally arbitrary and discriminatory.

1. Findings: Petitioner argues in his petition that Peyton Slough is tidal for four reasons: (1) Peyton Slough runs through a salt marsh below tide level, (2) present day U.S.G.S. maps show the marsh area as tidal, (3) over the past geologic ages Peyton Slough has been subject to the ebb and flow of the tides, and (4) flow in the channel and water are affected by the tides since at low tide discharge is by gravity through a culvert and tide gate and at high tide water levels are controlled by pumps.

None of petitioner's arguments are persuasive. The primary reason for the prohibition against discharge of sewage-bearing wastes to nontidal waters which was contained in the Interim Water Quality Control Plan already mentioned was to remove waste discharges from receiving waters where little

dilution was available and, hence, assimilative capacity is limited. The prohibition is appropriate. (See Water Code Sections 13241 and 13243.<sup>1</sup>)

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1. The validity of Order No. 74-134 should be assessed on the basis of the Water Quality Control Plan in effect at the time Order No. 74-134 was adopted. At the same time, we will officially notice that the Regional Board has subsequently adopted its final Water Quality Control Plan for the San Francisco Bay Basin, and that this Plan has been approved by the State Board. (See State Board Resolution No. 75-28.) This Plan contains certain prohibitions, including the following.

It shall be prohibited to discharge:

- "1. Any wastewater which has particular characteristics of concern to beneficial uses:

\* \* \*

- "b. At any point at which the wastewater does does not receive a minimum initial dilution of at least 10:1.

- "c. Into any non-tidal water or dead-end slough or similar confined water areas or their immediate tributaries.

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".... Exceptions to...b, and c above will be considered for...discharges having a high initial dilution where an inordinate burden would be placed on the discharger relative to beneficial uses protected and when an equivalent level of environmental protection can be achieved by alternate means. Exceptions will also be considered where a discharge is approved as part of a reclamation project or where it can be demonstrated that environmental benefits will be derived as a result of the discharge."

Order No. 74-134 appears to be appropriate under the terms of the current Water Quality Control Plan also, unless the discharge involved qualifies for an exception under the terms of the current Water Quality Control Plan.

We also will note that the petitioner has a pending application with the Regional Board that its discharge is such as to qualify under the exceptions which are applicable and that this claim is currently being evaluated by the Regional Board. (See Water Quality Control Plan Report, San Francisco Bay Basin (2), page 54-6.)

The primary reason that Peyton Slough was considered nontidal was that it did not receive the dilution expected of tidal waters. Petitioner's first three arguments are irrelevant to the real issue of dilutional capacity of the receiving waters. Petitioner's fourth argument admits that the slough does not receive the dilution at high tide expected of tidal areas. At high tide the tide gates installed by the local Mosquito Abatement District keep the waters of Suisun Bay from entering Peyton Slough and the pumps of the District transport waters in Peyton Slough to Suisun Bay. Accordingly, there is no dilution of Peyton Slough with tidal water and it was appropriate for the Regional Board to apply the prohibition set forth in Order No. 74-134.

As pointed out above, petitioner contends that the prohibition is vague as a result of the "unresolved question" of whether Peyton Slough, at the point of discharge, is tidal. We do not believe that this issue was left unresolved because the Regional Board specifically found in Finding No. 2(A) that Peyton Slough, at the point of discharge, was nontidal. We agree with that finding for the reasons stated above, and we also agree that the Regional Board has the power to determine application of its own Water Quality Control Plan, including the prohibition contained therein.

Petitioner's contention that the form of the Regional Board's exception to the prohibition was improper is without merit. The gist of petitioner's contention is that the exception lacks an ascertainable standard to be met and is therefore vague. We think the petitioner misconstrues the

exception. Simply stated, Provision D(2) of Order No. 74-134 provides for a general prohibition of discharge to nontidal waters, and also authorizes an exception to this prohibition when the Regional Board finds that an alternative program would be environmentally beneficial. The language regarding "the Board's satisfaction" merely means that the petitioner must establish that an alternative program would be environmentally beneficial to the reasonable satisfaction of the Regional Board. Viewed in this light, the wording of the exception is neither vague nor legally improper.

Finally, petitioner's contention that the prohibition is generally arbitrary and discriminatory is also without merit. Petitioner in its amended petition does not elaborate on this contention or cite any cases or other legal authority in its support. We will not respond to such a general contention. To do so would require us to speculate as to the meaning intended by petitioner and then to respond to such speculation. Such an exercise would serve no purpose.

### III. CONCLUSION AND ORDER

After review of the entire record, and for the reasons heretofore expressed, we conclude that the action of the Regional Board in adopting Order No. 74-134 was proper. We also conclude that the Regional Board should continue with its review and evaluation of the discharge to determine whether or not any of the exceptions provided for in the current Water Quality Control Plan are in fact applicable to the discharge of the petitioner.

IT IS THEREFORE ORDERED that the petition for review of Order No. 74-134 is denied, and Order No. 74-134 is remanded to the Regional Board for proceeding consistent with this order.

Dated: July 15, 1976

/s/ John E. Bryson  
John E. Bryson, Chairman

/s/ W. Don Maughan  
W. Don Maughan, Vice Chairman

/s/ W. W. Adams  
W. W. Adams, Member

/s/ Roy E. Dodson  
Roy E. Dodson, Member

/s/ Jean Auer  
Jean Auer, Member

