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STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of )  
LAGUNA HILLS SANITATION, INC., for )  
Review of Order No. 80-84 of the )  
California Regional Water Quality )  
Control Board, Santa Ana Region. )  
Our File No. A-276. )

Order No. WQ 80-22

BY THE BOARD:

On November 18, 1977, the California Regional Water Quality Control Board, Santa Ana Region (Regional Board) adopted waste discharge requirements in Order No. 77-100 for Laguna Hills Sanitation, Inc. (LHSI or petitioner). The requirements regulate discharges from sewage collection, treatment, and disposal facilities in Laguna Hills. The requirements include prohibitions against discharging wastes to San Diego Creek and to property not owned or controlled by LHSI.

On May 30, 1980, the Regional Board issued a cease and desist order against LHSI in Order No. 80-84. The order requires LHSI to cease and desist from discharging wastes in violation of Order No. 77-100, prohibits discharges to the LHSI sewer system by new dischargers, and establishes reporting requirements.<sup>1/</sup>

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1. The order also provides that, if in the opinion of the Executive Officer, LHSI fails to comply with the provisions of the order, the Executive Officer is directed to request the Attorney General to take judicial enforcement action against LHSI. On August 13, 1980, the Executive Officer referred the matter to the Attorney General for judicial enforcement.

On June 27, 1980, in Order No. 80-128, the Regional Board amended the cease and desist order. The amendments to Order No. 80-84 deleted the prohibition on discharges by new dischargers and the reporting requirements.

On June 30, 1980, the State Water Resources Control Board (State Board) received a petition from LHSI seeking review of Order No. 80-84.

#### DISCUSSION

We conclude herein that the instant petition fails to raise substantial issues that are appropriate for review. (23 Cal. Admin. Code Section 2052(a)(1).) We therefore decline to review the Regional Board's action or to grant the relief requested.

In Order No. 80-84, the Regional Board found that sewage effluent was discharged to San Diego Creek and to property not owned or controlled by LHSI on several occasions. These discharges were in violation of waste discharge requirements in Order No. 77-100. In Order No. 80-84, as amended by Order No. 80-128, LHSI was ordered to cease and desist from discharging wastes in violation of the waste discharge requirements.

In its petition, LHSI does not refute the finding of the Regional Board that LHSI discharged sewage effluent to property not under its control or ownership. Rather, petitioner's contentions are limited to the refutation of findings by the Regional Board which are not essential to the validity of the cease and desist order.

Petitioner's contentions are: (1) that it fulfilled the requirements of Order No. 77-100 to report discharges; (2) that increases in the volume of sewage collected by LHSI will not result in violation of Order No. 77-100; (3) that LHSI did not intentionally or negligently violate Order No. 77-100; and (4) that LHSI exercised good faith and did come into compliance shortly after adoption of the cease and desist order. Petitioner nowhere refutes the finding by the Regional Board that LHSI violated the discharge prohibitions in Order No. 77-100 by discharging sewage effluent on a number of occasions.

The applicable requirements for issuance of cease and desist orders by Regional Boards are found in Water Code Section 13301 and 23 Cal. Admin. Code Section 2240. Section 13301 provides, in part:

When a regional board finds that a discharge is taking place or threatening to take place in violation of requirements or discharge prohibitions prescribed by the regional board...the board may issue an order to cease and desist....

Section 2240 provides:

A cease and desist order should be issued whenever significant violations of waste discharge requirements or prohibitions are threatened or such violations are occurring or have occurred and there is a likelihood that the violations will continue in the future.

At the time of the issuance of Order No. 80-84, it is undisputed that petitioner had discharged to San Diego Creek on a number of occasions. It is also clear from the petition that the prohibited discharges continued for at least two weeks after issuance of the cease and desist order. These undisputed facts present a clear basis for a cease and desist order. The

Regional Board's findings which petitioner disputes -- reporting violations, intentional or negligent violation of Order No. 77-100,<sup>2/</sup> and the potential for future violations<sup>3/</sup> -- are not essential to the validity of Order No. 80-84, as amended by Order No. 80-128.

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2. By letter dated October 22, 1980, petitioner asserts that the Regional Board's counsel advised the Regional Board that a finding of "intent or negligence" was essential to issuance of the cease and desist order. We disagree. Our review of the record indicates that counsel's advice related to the grounds for referring the matter to the Attorney General for recovery of civil monetary remedies. In any event, the relevance of the advice to the issue at hand escapes this Board, since the question of "intent or negligence" is superfluous to the issuance of the cease and desist order.
3. We note that in Section 2240 of our regulations the condition for present and past discharges may be modified by the clause requiring threats of future violations. We do not read Section 2240, however, as establishing a requirement of threatened violations for the issuance of cease and desist orders. Water Code Section 13301 establishes a broad set of circumstances under which cease and desist orders may be issued. There is no requirement in Section 13301 that in the case of an existing violation there also be a threat of future violations. Section 2240 presents a narrower set of circumstances in which Regional Boards should issue cease and desist orders. In any event, if there were any conflict between the regulation and the statute, the statute would control. Department of Social Welfare v. Kern County (1947) 29 Cal. 2d 873.

CONCLUSION

From the discussion above, we conclude that the allegations made in the petition, even if true, would not be sufficient to support rescission of the cease and desist order. We therefore decline to review the instant petition.

Dated: NOV 20 1980,

/s/ Carla M. Bard  
Carla M. Bard, Chairwoman

/s/ William J. Miller  
William J. Miller, Vice Chairman

ABSENT  
L. L. Mitchell, Member

/s/ Jill B. Dunlap  
Jill B. Dunlap, Member

ABSENT  
F. K. Aljibury, Member

