STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petitions of the City of PACIFIC GROVE for Review of Orders Nos. 81-48 and 81-49 (NPDES Permits Nos. CA0048135 and CA0048186) and of the MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY for Review of Orders Nos. 81-48, 81-49, 81-51, 81-52, and 81-53 (NPDES Permits Nos. CA0048135, CA0048186, CA0048011, CA0048119, and CA0048097) of the California Regional Water Quality Control Board, Central Coast Region. Our Files Nos. A-299 and A-299(a).	Order No. WQ 82-8

BY THE BOARD:

On July 10, 1981, the California Regional Water Quality Control Board, Central Coast Region (Regional Board) adopted Orders Nos. 81-48, 81-49, 81-51, 81-52 and 81-53 (NPDES Permits Nos. CA0048135, CA0048186, CA0048011, CA0048119 and CA0048097). All of the orders contain waste discharge requirements for the Monterey Regional Water Pollution Control Agency. However, each order also includes one of the five wastewater treatment plants which comprise the regional system. Each order also names the local sewering entities who discharge to each treatment plant. The following chart sets forth the relationship:

Order No.	Treatment Plant	Sewering Entity
81-48	Monterey	City of Monterey City of Pacific Grove

Order No.	Treatment Plant	Sewering Entity
81-49	Seaside	Seaside County Sanitation District City of Seaside City of Sand City City of Del Rey Oaks
81-51	Castroville	Castroville County Sanitation District Moss Landing County Sanitation District (when connected)
81-52	Salinas No. 1 (Main)	City of Salinas
81-53	Salinas No. 2 (Alisal)	City of Salinas

The orders modify existing NPDES permits to 1) add the names of the responsible sewering entities, 2) impose the requirements of the National Pretreatment Program, 3) change the discharge prohibition date, and 4) in the case of Salinas, to require an algal growth potential study on discharges to the Salinas River.

On July 24, 1981, the State Board received a petition from the City of Pacific Grove raising numerous objections to Orders Nos. 81-48 and 81-49. On August 4 and August 11, 1981, amendments to the Pacific Grove petition were received. On August 7, 1981, the State Board received a petition from the Monterey Regional Water Pollution Control Agency (MRWPCA) objecting in part to Orders Nos. 81-48, 81-49, 81-51, 81-52, and 81-53 of the Regional Board.[1/]

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1. We will address only the major issues raised by the petitions. The other issues are not discussed because they fail to raise substantial issues that are appropriate for review. 23 Cal. Admin. Code 2052(a).

BACKGROUND

Since the late 1960's there has been concern over sewage disposal into Monterey Bay. This has been particularly true when beaches had to be closed because of sewage contamination. In response to this problem the Regional Board set up a zone of prohibition in 1971 extending from the mouth of the Salinas River to Point Pinos. The zone was expanded in 1975 to include the offshore area within three miles of Point Pinos. The zone is part of the Regional Board's basin plan. We upheld the validity of the zone on March 3, 1982. (Order No. WQ 82-2.)

Concern about the Salinas River has also been mounting for several years. Beneficial uses of the river have frequently been affected because of high bacterial counts, solid deposition, pesticides, and nutrient rich waters. The Regional Board prohibited waste discharge to the river in its basin plan.

In 1978 a report recommended the building of a regional wastewater treatment plant with an outfall beyond the prohibition zone.[2/] The report also suggested phasing in agricultural reuse of treated water with only seasonal ocean discharges.

Under the prohibition standards, both in Monterey Bay and the Salinas River, discharges have continued while work has gone forward on the regional plant. The discharges have been carefully regulated and monitored under waste discharge requirements and enforcement orders with time schedules.

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2. Engineering Science, Final Facilities Plan Report for North Monterey County, prepared for Monterey Peninsula Water Pollution Control Agency, January 1978.

CONTENTIONS AND FINDINGS

1. Contention: Both MRWPCA and Pacific Grove believe that the pretreatment program set forth in the orders contains requirements which exceed those established by the Environmental Protection Agency (EPA).

Finding: We find no problem in reconciling the Regional Board orders with 40 CFR 403.8 and 403.9, the pretreatment regulations from EPA. Because neither petitioner was very specific in its allegations on this point, we must examine each requirement in light of the regulations.

First, the Regional Board required each discharger to submit a pretreatment plan by January 1, 1983. In view of the July 1, 1983 compliance date in both the discharge requirements and the EPA regulations, this date seems very reasonable. Second, a series of dates for interim compliance is set up. This, too, does no violence to the federal rules. Third, the dischargers are told they must apply and enforce a pretreatment program by July 1, 1983. This is exactly what is specified in 40 CFR 403.8(d). Fourth, certain aspects of the Standard Provisions and Reporting Requirements normally used by the Regional Board are incorporated. These deal with categorical treatment standards for indirect dischargers and are specially designed to implement other federal pretreatment regulations.

Thus, it appears that the pretreatment specifications in the Regional Board order are entirely justified under federal law and regulations. The Regional Board order should be affirmed on this point.

2. Contention: MRWPCA asserts that the terms of the permits issued to Salinas (Orders Nos. 81-52 and 81-53) which require the agency to conduct an algal growth potential study in the Salinas River are unreasonable. MRWPCA contends that no evidence was introduced to support the need for such a study and that the Regional Board has the burden of proving the existence of the problem before the discharger can be made to solve it.

Finding: Section 13267 of the Water Code provides, in part:

> "(a) A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating thereto or authorized by this division, may investigate the quality of any waters of the state within its region."
>
> "(b) In such an investigation, the regional board may require that any person discharging or proposing to discharge waste within its region or any citizen or domiciliary, or political agency or entity of this state discharging or proposing to discharge waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, such technical or monitoring program reports as the board may specify; provided that the burden, including costs, of such reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained therefrom."

There is ample evidence in the record to support the need for the study. The discharger should bear the burden of such a study. However, we believe the scope of the study is excessive resulting in unreasonably high costs. A narrower, less expensive, study should be designed and, once the Salinas River Mitigation Study is well underway, implemented.

The general problems which plague the Salinas River are very well documented. The lower stretches of the river suffer excessive levels of dissolved nutrients. Nitrogen and phosphorus are present in the treatment plant discharges as well as in agricultural runoff. Studies indicate that treatment plants account for the major portion of the nutrients and that removing that source of water would significantly improve the water quality.[3] The previously demonstrated need to create the prohibition zone reflects the existence of a biostimulant problem. There is also some evidence about the problems of baterial growth.

It is believed that not all of the consequences of eliminating all wastewater discharges from the Salinas plants to the river are beneficial. There are indications that substantial adverse impacts on the biota will result from removing the effluent flow.[4] A study of this problem is now being conducted. When the Salinas River Mitigation Study has been completed, a decision will be made on how much, if any, flow should continue. If a discharge is to be permitted, or even required, by the study, it is essential that all parties concerned be fully informed about what nutrient levels must be met to prevent algal growth and nuisance conditions. The purpose of the algal growth potential study is to find out which nutrients to control and in what amounts. However, unless it is determined that river discharges should continue, this study appears premature.

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3. Engineering Science, Lower Salinas River Flow Reduction Impact Report, July 1980.

4. At certain times of the year, the Salinas River below Salinas consists primarily of effluent.

We are also impressed by the enormous cost of carrying out the Regional Board order for the algal study. MRWPCA estimates a cost of about $100,000. Our staff concurs in that figure. The scope of the study should be narrowed. Similar results can be obtained by reducing the number of sampling stations and increasing the chemical analysis of samples taken along the Salinas River for nitrogen and phosphorus. MRWPCA should have two months from the date of a decision that wastewater flows to the Salinas River should continue within which to propose a satisfactory, cost-effective algal growth potential study plan to the Regional Board.

3. Contention: MRWPCA maintains that the new monitoring requirements in the Seaside order (No. 81-49) and the Castroville order (No. 81-51) are excessive. The former requires monitoring of biological oxygen demand (BOD) constituents and suspended solids even though there is no effluent requirement to remove them. The latter doubles the frequency for the monitoring of BOD and suspended solids on the Castroville influent.

Finding: The NPDES order for Seaside (81-49) requires that the discharger apply and enforce federal pretreatment requirements by the July 1, 1983 deadline. In conjunction with that, the Regional Board could have set interim requirements for both BOD and suspended solids. Instead, only monitoring of these factors was required.

Section 13383 of the Water Code specifically authorizes monitoring of discharges.

> "The state board or regional board may require dischargers of pollutants...to navigable waters or to public treatment systems to establish and maintain records, make reports, install, use and maintain monitoring equipment

or methods, including, where appropriate, biological monitoring methods, sample effluent as prescribed, and provide other information as may be reasonably required."

We find ample evidence in the record to support these monitoring requirements. The Regional Board will find this information of great value when it must later decide whether there is a need to impose interim requirements for these pollutants and to determine the amount of these pollutants being discharged.

The Castroville order (81-51) merely increases the frequency of monitoring from once a month to twice a month. This extra increment of sampling is quite small in light of the total project, and we see nothing inappropriate in the increase contained in the order.

4. Contention: Pacific Grove contends that it is improper to name it as a co-permittee in Order No. 81-48. The city operates only the collection system which transports the city's sewage to the regional treatment system. This fact, according to Pacific Grove, renders its inclusion in an NPDES permit inappropriate.

Finding: We rejected this same contention in 1980.[5/] Pacific Grove is a member of the MRWPCA which is a joint powers agency consisting of several cities and districts around Monterey Bay. As a member of the joint powers agency, Pacific Grove has no direct ownership of the assets of MRWPCA but does have one seat and one vote on the board of directors. Thus, Pacific Grove is in a position to determine how the regional treatment system is operated.

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5. Petition of City of Pacific Grove. Order No. WQ 80-2.

Under these circumstances, it is entirely proper to issue an NPDES permit to both the regional treatment system and the local collector. While collectors who are mere customers of a regional system should not be included, Pacific Grove, with its involvement in the creation and management of the MRWPCA, cannot claim to be only a customer. This principle is clearly stated in our 1980 Pacific Grove order.

5. Contention: Both petitioners believe the Regional Boards orders are vague or unclear in defining the responsibility of the Agency versus that of each city.

Finding: We fail to see why the petitioners should find these orders difficult to understand. In the findings section of each order, the discussion generally separates the two classes of entities whenever it is important to do so. Then, in the order itself, there is a very clear distinction between MRWPCA and the cities. In each case, requirements A through E refer to MRWPCA. Then, two short paragraphs require the city in question to comply with certain of the standard provisions[6/] and to cooperate with the regional agency in developing a pretreatment plan. Finally, the monitoring requirements are only for MRWPCA.

6. Contention: Pacific Grove contends that there is insufficient evidence to justify the need for the zone of prohibition as it is presently defined in order to protect the beneficial uses in the southern part of Monterey Bay.

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6. Pacific Grove's assertion that the Regional Board was not familiar with the standard provisions that they adopted nearly five years ago is meritless.

Finding: As we have already devoted a considerable amount of time to this issue,[7] we have no desire or intention of reviewing the zone of prohibition once more. Issues such as this one which are contained in properly adopted basin plans will not be reviewed time and again.[8]

7. Contention: Pacific Grove asserts that the order (No. 81-48) violates Water Code Section 13360 "in prescribing the manner in which compliance may be had."

Finding: Section 13360 of the Water Code states, in part:

> "No waste discharge requirement or other order of a regional board or the state board or a decree of a court issued under this division shall specify the design, location, type of construction, or particular manner in which compliance may be had with that requirement, order, or decree, and the person so ordered shall be permitted to comply therewith in any lawful manner."

There is considerable doubt that this section applies to NPDES permits. Chapter 5.5 of the Porter Cologne Act (Sections 13370-13389) deals with California's implementation of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.). Section 13377 states, in relevant part:

> "Notwithstanding any provision of this division [Porter-Cologne], the state board or regional board shall...issue waste discharge requirements... which apply and ensure compliance with all applicable provisions of the [Federal Water Pollution Control] act."

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7. Petition of Marina County Water District, Order No. WQ 82-2.

8. Petition of Tahoe-Truckee Sanitation Agency, Order No. WQ 78-8.

This mandate to enforce federal rules clearly applies when the federal rules are specific. Where they are general, the Regional Board has less authority and should exercise restraint in imposing specific methods of compliance.

In this case, there is nothing whatever improper about the standard provisions in this order. Petitioner complains about several portions of the standard provisions. The sections complained of require:

a. That the facilities and systems "shall be properly operated and maintained." This includes such things as adequate funding, training, and laboratory controls.

b. That the discharger "shall take all reasonable steps to minimize or correct adverse impacts on the environment resulting from non-compliance with this permit."

c. That safeguards, including such preventative measures as stand-by generators and retention capacity, "shall be provided to assure maximal compliance with all terms and conditions of this permit."

d. That the discharger shall comply with the federal pretreatment program.

Except for the pretreatment standards which, as we noted above, are exempt from the provisions of Section 13360, we find not the faintest glimmer of substance in Pacific Grove's complaint that these provisions specify the manner of compliance. Petitioner apparently fails to see that there is a difference between being told what to do and how to do it. Perhaps the

reading of a case cited by petitioner, Pacific Water Conditioning Association v. City Council of Riverside,[9/] would assist petitioner in understanding the distinction. In any event, we find nothing inappropriate or improper in the compliance standards of this order.

8. Contention: Pacific Grove maintains that Article XIII B of the California Constitution (also known as "Proposition 4" or the "Gann Initiative") prevents the Regional Board from issuing an order which imposes expenses on the city without provision for funding.

Finding: Section 9(b) of the Gann Initiative creates one of the several exceptions to the general rule that "the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service." Under that section, a local government which must comply with a court order or some federal statute or regulation is not entitled to seek reimbursement from the state. Since the entire NPDES program is federal, it is not subject to the subvention rule. The mere fact that the program is administered through the state does not alter its essentially federal character.

Furthermore, the Gann Initiative contains a "grandfather clause" which provides that only legislation passed after January 1, 1975 is subject to its terms. An extensive analysis of the Initiative by the Office of the Legislative Counsel

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9. 73 Cal.App.3d 546, 140 Cal.Rptr. 812 (1977).

concluded that the proper date for its applicability is the day it took effect, July 1, 1980.[10/] Most of the Porter-Cologne Act predates the 1975 cutoff and virtually all of it, including Chapter 5.5, was enacted before July 1, 1980.

In addition, the provisions of SB 90 (Revenue and Taxation Code, Sections 2201 et seq.), which also requires state reimbursement of local expenses, contain several exceptions. Among them is a specific exclusion of requirements adopted by a regional water quality control board.[11/] We do not believe that the Gann Initiative eliminated these exceptions. The general rule that the Constitution is not a grant of power but rather a limitation or restriction on the Legislature[12/] indicates that such exceptions continue to exist absent their repeal.

Finally, the Gann Initiative treats regulatory licenses, user charges, and user fees as part of tax revenues only to the extent that they exceed the cost of providing the services. Thus, a local government which passes through the costs of a mandated activity suffers no loss and is not entitled to state reimbursement. Such is the case with sewer fees.

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10. Legislative Counsel Opinions No. 15358 and 15982. The argument is very complex but essentially rests on the fact that, because the state was not retroactively mandated to pay for post-1975 subventions, any such money that was paid would raise the government's spending limit without counting towards the money it is permitted to appropriate. Thus, a local government would be free to impose additional taxes to duplicate funding received from the state. This would clearly be inconsistent with the rest of the Initiative.

11. Revenue and Taxation Code, Section 2209(c).

12. Dean v. Kuchel (1951) 37 Cal.2d 97, 100, 230 P.2d 811.

In conclusion, the contention that Article XIII B of the Constitution requires that we provide funding for Pacific Grove's compliance program is without merit.

CONCLUSIONS

For the reasons discussed above, we conclude as follows:

1. That the algal growth potential study required by Orders 81-52 and 81-53 involves unreasonably high costs and should be modified. The dischargers should propose a satisfactory, cost-effective plan for such a study to the Regional Board within two months of any decision that wastewater flows to the Salinas River should continue.

2. That Orders Nos. 81-48, 81-49, 81-51, 81-52 and 81-53 are, in all other respects, proper and appropriate.

ORDER

IT IS THEREFORE ORDERED that Orders Nos. 81-52 and 81-53 be remanded to the Regional Board for action consistent with this order.

DATED: July 15, 1982

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

/s/ L. L. Mitchell
L. L. Mitchell, Vice-Chairman

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

/s/ F. K. Aljibury
F. K. Aljibury, Member