

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of)
Phillips Petroleum Company for Review)
of Findings No. 72-2 of the California)
Regional Water Quality Control Board,)
San Francisco Bay Region)

Order No. 72-20

On June 20, 1972, the Phillips Petroleum Company petitioned the State Water Resources Control Board to review Findings No. 72-2 of the California Regional Water Quality Control Board, San Francisco Bay Region, adopted on May 23, 1972.

The petition requests the State Board to review and find inappropriate and improper the Regional Board's finding that Phillips Petroleum Company was the "person responsible" for three oil deposits occurring at the Amorce Terminal on March 28, 30, and April 7, 1972. The petition further requests the State Board to find inappropriate and improper the Regional Board's request to the Attorney General to petition the Superior Court for recovery of a sum not exceeding \$6,000 for each day on which the deposits occurred and requests the State Board to dismiss this matter or, in the alternative, to direct the Regional Board to dismiss the matter.

The State Board having considered the petition and records of the Regional Board finds as follows:

1. Petitioner Phillips Petroleum Company owns and operates the Amorce Wharf and Terminal near the City of Martinez and operates the tankers SS Phillips California and SS Phillips Kansas.

2. On March 28, 1972, shortly after midnight, approximately 63 gallons of oil were deposited from the Amorce Wharf into the waters of Suisun Bay. This deposit was overflow from

a tank located beneath the wharf which was regularly used to receive oil remaining in hoses used to discharge oil from tankers after the hoses were disconnected from the tankers. The overflow from this tank occurring on March 28 was caused by the omission of a wharfman, employed by Phillips Petroleum Company, who inadvertently left a circulating line valve open when attempting to pump the tank empty prior to draining a hose disconnected from the SS Phillips California. The wharfman involved had 27 years of service with Phillips Petroleum Company and was trained and familiar with the procedures employed in this operation.

The deposit occurring on March 28 was carried by wind and tide into the Martinez marina where it fouled some small boat hulls and lines.

3. On April 7, 1972, at about 4:20 a.m., approximately 5 to 6 gallons of oil were deposited from the Amorco Wharf into the waters of Suisun Bay. This deposit was also overflow from the tank located beneath the wharf in which hoses are drained. The overflow from the tank occurring on April 7 was caused by a wharfman who left a valve on a drainline open upon commencing to discharge oil from the SS Phillips California. The wharfman involved had 26 years of experience with Phillips Petroleum Company and was trained in the procedures employed in this operation.

4. On March 30, 1972, at about 3:30 a.m., approximately 294 gallons of oil were deposited from the SS Phillips Kansas, moored at the Amorco Wharf, into the waters of Suisun Bay. This deposit flowed into the bay through an open sea suction line on the SS Phillips Kansas which was opened to take on ballast

water. This discharge was caused by the act of a pumpman, employed by Phillips Petroleum Company, who opened the sea suction valve before a pump was started, allowing oil in the discharge riser to flow into Suisun Bay. The chief mate of the SS Phillips Kansas who was in charge of this operation was well qualified and had a record of efficient and competent service with Phillips Petroleum Company.

The specific contentions and the State Board's findings concerning them are as follows:

1. Contention: It was an abuse of discretion for the Regional Board to refuse to restrict application of Water Code Section 13350(a)(3) to a deposit occasioned by action of a voluntary and intentional nature, knowingly or willingly done.

Findings: Water Code Section 13350(a)(3) is not and should not be limited in its application to deposits of oil occasioned by action of an intentional and voluntary nature, knowingly and willingly done.

California Water Code Section 13350(a)(3) provides:

"(a) Any person who ... (3) causes or permits any oil or any residuary product of petroleum to be deposited in or on any of the waters of the state, except in accordance with waste discharge requirements or other provisions of this division, may be liable civilly in a sum of not to exceed six thousand dollars (\$6,000) for each day in which such violation or deposit occurs."

The words "causes or permits", in Section 13350(a)(3) are used in the disjunctive so that if one either causes the

deposit of oil or permits the deposit of oil, he is amenable to the civil penalties provided for in this section.

The word "cause" includes acts as well as omissions. Each of the deposits of oil occurring on March 28, 30, and April 7 resulted from either the omission to close a valve or the act of prematurely opening a valve on equipment used in connection with the discharge of oil from tanker vessels at the Amorcó Wharf and such acts or omissions caused the deposits of oil into the waters of Suisun Bay.

While there is perhaps no word in the entire field of law which has called forth disagreement or upon which opinions are in such a welter of confusion, it is quite clear that the word "cause", without further modification, does not include state of mind as part of its meaning (as would be the case if the words "intentional", "voluntary", "knowingly", or "willingly" had been used in Section 13350(a)(3). In California, regulatory statutes enacted for the protection of the public health and welfare which impose fines and penalties for their violation, such as Water Code Section 13350, have been consistently interpreted to require neither knowledge nor the intent where neither knowledge nor intent is expressly made a condition of the statute. See for example People v. Balmer (1961) 196 C.A.2d Supp. 874, 17 C.R. 612; People v. Beggs (1945) 69 C.A. Supp. 819, 160 P.2d 600; In re Caspersen (1945) 69 C.A.2d 441, 159 P.2d 88.

If the Legislature had intended to limit the application of Section 13350(a)(3) to one who intentionally, knowingly, willingly or voluntarily causes the deposit of oil in or on the waters of the State, it would have used limiting words in that section

as it did in Subsections 13350(a)(1) and (2) which provide that there must be intention or negligent violations of cease and desist orders and violations of requirements in order to justify recovery of civil penalties.

2. Contention: It was an abuse of discretion for the Regional Board to refuse to discharge its duty to determine and find that one, such as Petitioner, who accidentally deposits oil is not one who causes or permits oil to be deposited in or on state waters within the meaning of Section 13350(a)(3).

Findings: Having found that Section 13350(a)(3) is not limited in its application to those who intentionally, knowingly, willingly or voluntarily deposit oil in or on the waters of the State, it necessarily follows that Section 13350(a)(3) is applicable to one who "accidentally" causes the deposit of oil in or on the waters of the State.

There is absolutely nothing to suggest that one who "accidentally" causes a deposit of oil is not one who causes a deposit of oil within the meaning of Section 13350(a)(3). On the other hand, it is clear that the protection of the beneficial uses of the waters of the State and the serious impairment to the beneficial uses occasioned by the deposit of oil demands a high degree of care from those, such as Petitioner, who may regularly process, transport and use petroleum and petroleum products. Civil penalties, in the judgment of this Board, should be imposed on those who accidentally cause deposits of oil through a failure to exercise the great degree of care that the protection of the waters of the State demand. It was therefore appropriate and proper for the Regional Board not to exclude from the application of Section 13350(a)(3) deposits of oil accidentally caused.

3. Conclusion: Under the circumstances presented, it was a prejudicial abuse of discretion of the Regional Board, purporting to enforce Section 13350, to base its action on the mere fact of a deposit, and to refuse to exercise its clear function and duty under said section to base any action by it on its consideration and determination of the circumstances of the deposit.

Findings: Section 13350(b) requires the court, in determining the amount of penalty, to "take into consideration all relevant circumstances, including but not limited to, the extent of the harm caused by the violation, the nature and persist-ence (emphasis added) of the violation, the length of time over which the violation occurs and the corrective action, if any, taken by the discharger." To the extent this provision provides a standard for determining the amount of the penalty, in the judgment of this Board, it should also be used by the regional boards in exercising their discretion whether or not to request the Attorney General to petition the court.

In this case, three deposits of oil were caused by Phillips Petroleum Company in the space of 11 days. In each case, the deposit was caused by a failure of Phillips' employees to close or open valves on equipment regularly used in connection with the discharge of oil from tanker vessels. Despite the fact that the employees involved were represented to be well qualified and well trained, the repeated occurrence of similarly caused deposits, two of which involved appurtenances to the same tank, compels an inference that Phillips Petroleum is not adequately exercising the high degree of control over the use of this equipment by its employees and demanding from its personnel the

high degree of care which the protection of the waters of the State require. This Board finds that there is substantial evidence to support the Regional Board's exercise of discretion in requesting the Attorney General to petition the court for civil penalties in this case.

4. Contention: It was an abuse of discretion for the Regional Board to refuse to consider all relevant circumstances, including effectiveness of administrative remedies, in deciding whether the Attorney General should be requested to seek imposition of a fine against Petitioner Phillips Petroleum Company in the Superior Court.

Findings: Having found that there was substantial evidence in the record to support the Regional Board's request to the Attorney General, this Board specifically finds that other administrative remedies are not a relevant consideration in determining whether to request the Attorney General to petition the court for the recovery of civil penalties under Section 13350(a)(3).

. It is patent that the deposit of oil in or on the waters of the State is contrary to the interests of public health and welfare. The urgency and pervasiveness of this policy finds expression in Section 13350(a)(3) which exposes one to strict liability as a direct consequence of causing a deposit of oil. Save application to a court for the recovery of civil penalties under Section 13350(a)(3), there are no interim or alternative administrative remedies available to regional boards. Accordingly, the Regional Board did not abuse its discretion in failing to consider the effectiveness of administrative remedies, there being none to deal with the problem.

5. Contention: The advice and argument of the Board's counsel to the Board at the hearing was both erroneous and prejudicial, and it was an abuse of discretion for the Regional Board to turn over its function and duty under Section 13350 to its counsel, or staff, and to permit itself to be guided by prejudicial arguments of counsel.

Findings: It is within the province of counsel and members of the regional board staff to argue the evidence at a hearing before the Regional Board. Moreover, since this Board has found that there is substantial evidence in the record to support the Regional Board's request to the Attorney General to petition the court for the recovery of civil penalties, the argument of counsel or staff to the Regional Board was not prejudicial.

6. Contention: It was an abuse of discretion and a denial of due process for the Regional Board to deny Petitioner a hearing such as is required under Section 13350(b) to determine whether Petitioner might be civilly liable.

Findings: This Board finds that Petitioner was afforded a hearing within the meaning of Section 13350(b).

This Board concludes that Petitioner caused the deposit of oil in and on the waters of this State on March 28, 30, and April 7, 1972, and that the Regional Board's action in requesting the Attorney General to petition the Superior Court was proper and appropriate.

IT IS HEREBY ORDERED that the petition of the Phillips Petroleum Company to review Findings No. 72-2 of the California Regional Water Quality Control Board, San Francisco Bay Region, is denied.

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

Dated: September 21, 1972

(BOARD MEMBERS' SIGNATURES)