

In the Matter of the Petition
of the Board of Harbor Commis-
sioners of the City of Los
Angeles for Review of an Action
of the California Regional Water
Quality Control Board, Los Angeles
Region, in Requesting Enforcement
of Cease and Desist Order No. 72-4

Order No. WQ 73-25

BY THE BOARD:

By letter dated October 9, 1973, the Los Angeles Board of Harbor Commissioners (Petitioner) petitioned the State Water Resources Control Board (State Board) to review an action of the Los Angeles Regional Water Quality Control Board (Regional Board). The action involved was the request to the California Attorney General by the Executive Officer of the Regional Board to take appropriate enforcement action under a cease and desist order issued to the Port of Los Angeles by the Regional Board on January 17, 1972 (Order No. 72-4).

BACKGROUND

On April 20, 1966, the Regional Board adopted Order No. 66-18 prescribing waste discharge requirements for the discharge of fish cannery wastes to Los Angeles Outer Harbor by the Port of Los Angeles. The Port of Los Angeles has title to the outfall through which the discharges occur. The discharges, however, are solely of fish cannery origin coming from three packing plants in the Harbor area. These three plants are operated by Pan Pacific Fisheries, Van Camp Sea Food Company and Star Kist Foods, Inc., respectively.

In 1969 and 1970, limited fish kills occurred in the Fish Harbor area of the Los Angeles Harbor. In October of 1971 a major fish kill occurred in Fish Harbor.

On January 12, 1972, the Regional Board held a noticed public hearing as a result of which it adopted a cease and desist order (Order No. 72-4). The order determined that requirements concerning floatable solids and a dissolved oxygen and sulfide level had been violated. The order provided that dissolved oxygen and sulfide levels (paragraphs A1 and A2 of Order No. 66-18) were to be complied with "forthwith" and that the floatable solids provisions (paragraphs A3 and B3 of Order No. 66-18) were to be complied with consistent with a time schedule. According to that schedule, equipment to control floatable solids was to be installed by September 1, 1972.

On July 19, 1972, the Regional Board, at the request of the canneries, by Order No. 72-26, delayed the deadline contained in Order No. 72-4 and set revised compliance dates as follows:

1. Equipment to be delivered by December 31, 1972.
2. Equipment to be in full operation by April 1, 1973.

According to the terms of Order No. 72-26, all other provisions of Order No. 72-4 were to remain in full force. These included the provisions that dissolved oxygen and dissolved sulfide requirements were to be complied with "forthwith".

On February 28, 1973, the Regional Board adopted National Pollutant Discharge Elimination System (NPDES) permits

for the fish canneries in question (Orders Nos. 73-20, 73-22, and 73-23). By petitions received March 30, 1973, the fish canneries requested that the State Board review the action of the Regional Board in adopting these orders and find that certain provisions of them were inappropriate and improper. In addition, the canneries requested a stay of the effect of the Regional Board's orders until such time as the State Board ruled on the substance of the appeals. By Order No. 73-9, issued April 19, 1973, the request for a stay was denied. The substance of the issues raised by the canneries' petitions on the NPDES permits is being reviewed and will be ruled on in the near future.

Beginning October 1, 1973, the dissolved oxygen level in Fish Harbor dropped below the level set in the waste discharge requirements prescribed by Order No. 66-18. In addition, discoloration and floating solids of fish cannery origin were observed in and around Fish Harbor. By letter dated October 4, 1973, in accordance with a provision of the cease and desist order (No. 72-4) authorizing and directing him to do so, the Executive Officer of the Regional Board requested the Attorney General to take appropriate action against the Port of Los Angeles for violations of the cease and desist order.

CONTENTION OF THE PETITIONER

Petitioner contends that the action of the Regional Board's Executive Officer in requesting the Attorney General to enforce the terms of the cease and desist order issued against

the Port of Los Angeles was inappropriate and improper because the fish canneries which discharge into the Port of Los Angeles' outfall were issued individual NPDES permits in February of 1973. Petitioner contends that the cease and desist order has been effectively superseded by the individual permits and is, therefore, no longer in effect.

FINDINGS AND CONCLUSIONS

There is nothing in the legislation which created the NPDES permit system, the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500), which would indicate that permits issued under the Act were intended to supersede all existing state water quality control requirements. Section 510 of that Act specifically states that "nothing in this Act shall (1) preclude or deny the right of any State...to adopt or enforce (A) any standard or limitation respecting discharges or pollutants, or (B) any requirement respecting control or abatement of pollution..." Likewise, Chapter 5.5 which was added to Division 7 of the California Water Code in 1972 in order to qualify the State to issue NPDES permits, provides in Section 13372 that to the extent other provisions of Division 7 are consistent with the provisions of Chapter 5.5, such provisions shall be applicable to actions and procedures provided for in the chapter.

The provisions of the NPDES permits and the cease and desist order at issue here are not inconsistent. In seeking judicial enforcement of the cease and desist order, the Regional

Board's Executive Officer chose one of the two alternative enforcement paths open to him and we cannot find that his action in doing so was inappropriate or improper.

Although the legal issue raised by petitioner has been considered in this instance, in general a request by the executive officer of a regional board for the Attorney General to take "appropriate enforcement action" in connection with violations of Board orders is an administrative action which should not be reviewed by this Board. What constitutes "appropriate enforcement action" should be determined by the Attorney General in consultation with the Board and its legal staff and, ultimately, by the court in those cases where a court action is filed. Hereafter, petitions for review of such requests by regional board executive officers will not be accepted.

IT IS HEREBY ORDERED that the petition of the Board of Harbor Commissioners of the City of Los Angeles be, and it is, denied.

Dated: November 15, 1973

W. W. Adams

W. W. Adams, Chairman

Ronald B. Robie

Ronald B. Robie, Vice Chairman

Roy E. Dodson

Roy E. Dodson, Member

Mrs. Carl H. Auer

Mrs. Carl H. (Jean) Auer, Member

W. Don Maughan

W. Don Maughan, Member