

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of)
THE CITY OF SAN DIEGO)
For Review of Administrative Civil)
Liability Order No. 86-15 of the)
California Regional Water Quality)
Control Board, San Diego Region. Our)
File No. A-545.)

ORDER NO. WQ 88-9

BY THE BOARD:

I. BACKGROUND

On October 1, 1987, the State Water Resources Control Board (State Board) received a request from the City of San Diego that it review, on its own motion, an administrative civil liability (ACL) order issued by the San Diego Regional Water Quality Control Board (Regional Board) on July 28, 1986. The order imposed a civil assessment of \$648,800 for past violations of water quality laws which resulted in sewage spills from a pumping station into Los Penasquitos Lagoon. The Regional Board voted to suspend all but \$20,000 of the assessment based on assurances of progress towards complete refurbishment of the plant.¹ The ACL order made it clear, however, that failure to meet any date in the existing Cease and Desist Order (C&D) No. 86-69 would trigger payment of a portion of the suspended assessment.

The C&D order contained 44 compliance dates. For any one failure to comply with the schedule, the City would owe \$130,000 of the suspended amount

¹ The \$20,000 assessment was forgiven when the City paid restitution to the Los Penasquitos Lagoon Foundation for losses suffered from the spills.

and each additional missed deadline would result in another \$11,290.91 being due and owing. In December 1986, the City appeared before the Regional Board to tell them that compliance with all the dates would be impossible and to ask that two dates be changed, because the City had decided to install a bigger pump than was originally planned. That decision, which everyone agreed was a good one, would push the completion date for the project back about 5 1/2 months. The Regional Board voted to extend the time schedule in the C&D order but, because the ACL order had not been appealed and was therefore final, they were without legal power to amend the conditions of the suspension of the ACL assessment. Thus, the anomaly arose whereby the City had two schedules, one for compliance with the C&D order, the other for compliance with the ACL conditions. The first could be met; the second could not be without going back to the smaller project.

The City actually finished the project more quickly than was anticipated under the revised schedule, in large measure because of substantial incentive bonuses paid to the contractor. However, the original schedule, which was tied to the ACL, was not met. The missed deadlines meant that \$163,873.73 was due and owing.

The City asked the Regional Board to reconsider the assessment and, on July 27, 1987, a hearing was held. The Regional Board decided not to reconsider the assessment, based on the Chief Counsel's interpretation of the law.

The City filed a petition with the State Board on October 1, 1987 asking that the State Board, on its own motion, consider the revision of the assessment. The Regional Board asked that the State Board grant review of the matter.

II. CONTENTION AND FINDING

Contention: The City of San Diego contends that it is unfair to hold them to one date in the order assessing administrative civil liability and another date in the cease and desist order.

Finding: The State Board normally bows to the judgment of the Regional Boards in dealing with administrative civil liability assessments. The Regional Board's desire that the two time schedules should be reconciled will be honored in this case.

Discussion: Orders assessing administrative civil liability are final and binding unless a petition for review of the order is filed within thirty days of the Regional Board action. However, the State Board may, on its own motion, grant review after the expiration of the time limit. (Water Code Section 13324(a).) The effect of granting review on the State Board's own motion is exactly the same as if a timely petition had been filed by the aggrieved party. Thus, in this case, even though the Regional Board was bound by the finality of its own order when no petition for review was filed with the State Board, the order may now be reviewed by the State Board.

The Regional Board has made it quite clear that, if they had been able to review and revise their order, they would have made the time schedules in the administrative civil liability order consistent with those in the cease and desist order. In matters concerning the assessment of administrative civil liability, the State Board has shown great deference to the judgment of the Regional Boards. We have consistently dismissed petitions where it was clear from the record that the Regional Boards had exercised sound discretion in

issuing an ACL order. This situation should be no different. We will not stand in the way of the Regional Board's desire to revise an order that they issued. Since they are prevented from making the proper changes by legal considerations, we will make the changes for them.

Therefore, the time schedule contained in the order assessing administrative civil liability (Order No. 86-15) will be amended to make the compliance dates consistent with those in the cease and desist order (Order No. 86-69 as amended). Because the City has complied with the dates in the cease and desist order, the imposition of the \$163,873.73 would be inappropriate.

III. ORDER

1. Regional Board Order No. 86-15 assessing administrative civil liability against the City of San Diego is hereby amended to make the time schedule for the completion of various tasks in the construction of sewage treatment facilities consistent with the amended time schedule contained in Cease and Desist Order No. 86-69 (with addendum).

2. Unless there are other violations of the cease and desist order not appearing in this record, the City of San Diego has satisfied its obligations under Regional Board Order No. 86-15 and nothing further is owed by the City for violations alleged in that order.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on August 18, 1988.

AYE: W. Don Maughan
Darlene E. Ruiz
Edwin H. Finster
Danny Walsh

NO: None

ABSENT: Eliseo M. Samaniego

ABSTAIN: None


Maureen Marche
Administrative Assistant to the Board

