

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Petitions for
Review of Order No. 71-52 of the
California Regional Water Quality
Control Board, San Francisco Bay
Region - Sanitary District No. 1
of Marin County

Order No. 71-28

On August 2, 1971, the San Francisco-Peninsula-Redwood Empire Building Industry Association, the California Builders Counsel, Jeffory Morshead and the Citizens' Assistance League to Marin Sanitary Districts, petitioned the State Water Resources Control Board to review an order (No. 71-52) of the San Francisco Bay Regional Water Quality Control Board, adopted on July 22, 1971, requiring Sanitary District No. 1 of Marin County to cease and desist from discharging the combined waste from Sanitary Districts Nos. 1 and 2 of Marin County and the City of Larkspur in violation of requirements prescribed by the regional board. Petitioners also requested the State Board to stay the regional board's order until completion of the review.

On August 16, 1971, a similar petition was filed by Sanitary District No. 1 of Marin County. Also on that date a letter was received from petitioners' counsel asking that several other parties be joined as petitioners.

The State Board having considered the petitions and the records of the regional board which concern petitioners' contentions, finds:

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The State Board having considered the petitions and the records of the regional board which concern petitioners' contentions, finds:

1. On July 20, 1971, a panel of three members of the regional board held a hearing to receive evidence concerning reported violations by Sanitary District No. 1 of Marin County (the district) of waste discharge requirements prescribed by the regional board on June 24, 1971.

2. At a regular meeting of the regional board on July 22, 1971, the panel presented its report and recommended order which the regional board then and there adopted without substantial change.

The regional board order, No. 71-52, found that the Sanitary Districts Nos. 1 and 2 of Marin County and the City of Larkspur had violated or threatened to violate requirements concerning floating particulate matter in the receiving water and that Sanitary District No. 1 is violating the requirement prohibiting bypassing of untreated sewage within its sewer service area. The order further found that any increase in the discharges of waste to the Sanitary District No. 1 service area will increase the frequency and duration of the bypass of untreated sewage and will further unreasonably impair water quality.

The district was ordered to cease and desist forthwith from violations of the floating particulate matter requirement and to comply with the bypass prohibition in accordance with a time schedule calling for full compliance by April 1, 1974. The order prohibited additional discharges to the district's sewer system with certain exceptions and directed the board's executive officer to request the Attorney General to take appropriate enforcement action if the district fails to comply with the provisions of the order.

3. The grounds for the petition and this Board's comments are:

(a) The full board did not review and consider the record of the panel hearing.

The pertinent statute is Water Code Section 13302(b) which provides in part that "The board, after making such independent review of the record and taking such additional evidence as may be necessary, may adopt, with or without revision, the proposed decision and order of the panel" (emphasis ours). The phrase "as may be necessary" applies to both the review of the record and the taking of additional evidence. The board, therefore, was not required to review and consider the evidence from the entire transcript, since the board did not in its discretion consider such review necessary.

In addition, the regional board is not required to review the transcript of a panel hearing when it adopts the panel's proposed decision and order without change. (See Taylor v. IAC (1940) 38 C.A.2d 75, 82.)

(b) Petitioners were not permitted to present evidence or offer arguments at the July 22 meeting of the regional board. The regional board has adopted a rule which precludes persons from seeing and hearing the panel report until approximately the beginning of the full board "hearing", thus precluding them from preparing "answers, rebuttals or arguments as to the contents thereof."

hearing on June 24 was not given. The requirement sought to be enforced by the order adopted on July 22 was solely a requirement of the previous resolution which had been rescinded.

The statements in the preceding paragraph are contained in paragraph 1(d) of the petition. They are, for the most part, inaccurate and have no apparent relationship to each other. The cease and desist order adopted on July 22 clearly found the district to be in violation of both the floating matter requirement as well as the bypass of sewage requirement. Both requirements are contained in Order No. 71-43 as well as in the earlier requirements which were rescinded. Notice of the hearing on June 24 at which the requirements were considered and adopted was given to the district and to other interested parties known to the board including the San Francisco-Peninsula-Redwood Empire Building Industry Association. This was sufficient.

(e) At the meeting on July 22 evidence consisting of unsworn testimony of a staff member as to the results of his inspection of the district's facilities after the panel hearing, and a letter from the City of Fairfax, were improperly received without permitting cross-examination or contrary evidence.

The statements of the staff member and the letter concerned matters which could not possibly have influenced the board in deciding whether to adopt the panel's report and recommended order.

4. Numerous other grounds are expressed in the petitions for the alleged invalidity of the regional board's action. They have been considered and found to be devoid of merit.

5. The regional board's action in adopting Order No. 71-52 was appropriate and proper.

IT IS HEREBY ORDERED that the petitions of San Francisco-Peninsula-Redwood Empire Building Industry Association, et al, and Sanitary District No. 1 of Marin County for review of the action of the San Francisco Bay Regional Water Quality Control Board in adopting Order No. 71-52 be, and each of them is, denied.

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

Dated: August 19, 1971.

KERRY W. MULLIGAN
Kerry W. Mulligan, Chairman

E. F. DIBBLE
E. F. Dibble, Vice Chairman

NORMAN B. HUME
Norman B. Hume, Member

RONALD B. ROBIE
Ronald B. Robie, Member

W. W. ADAMS
W. W. Adams, Member

Water Code Section 13302(a) provides for hearings to be conducted by panels of three or more board members. Section 13302(b) provides that "After the hearing, the panel shall report its proposed decision and order to the regional board and shall supply a copy to all parties who appeared at the hearing and requested a copy." The regional board procedures conformed to these provisions. All parties who appeared and offered evidence at the panel hearing were heard. The meeting on July 22 was not a hearing and petitioners were not entitled to present additional evidence or argument on that occasion. Petitioners do not allege that evidence or arguments which they wished to present at the July 22 meeting were not available to them and were not presented at the panel hearing on July 20.

(c) Petitioners were not allowed to make an offer of proof at the meeting on July 22.

Since the meeting was not a hearing for the taking of evidence or presentation of argument, an offer of proof was not in order.

(d) The notice of the panel hearing specified violations of only three requirements: odor nuisance, receiving water floating matter, and bypassing of untreated sewage. All of these were included in previous requirements which were rescinded by Order No. 71-43 adopted on June 24, 1971. The board found no violations of the first two requirements. Legal notice of the