

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition )  
of Dean W. Knight and Sons, Inc. )  
for Review of Order No. 6-73-18 ) Order No. WQ 73- 8  
of the California Regional Water )  
Quality Control Board, Lahontan )  
Region )  
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BY THE BOARD:

On February 13, 1973, Dean W. Knight and Sons, Inc. (hereinafter referred to as "Dean Knight") petitioned the State Water Resources Control Board (State Board) for a review of Order No. 6-73-18 of the California Regional Water Quality Control Board, Lahontan Region (Regional Board), adopted on February 1, 1973, amending Regional Board Order No. 6-72-11 and prohibiting additional discharges to a sewer system operated by Dean Knight and serving the residents of the Rolling Green Terrace subdivision in Inyo County.

The petition requests the State Board to find inappropriate and improper the Regional Board's actions in adopting Order No. 6-73-18 and Order No. 6-72-11. The petition further requests the State Board to rescind Regional Board Orders 6-73-18 and 6-72-11, to order the Regional Board to accelerate proceedings against the City of Los Angeles Department of Water and Power, and to grant such other and further relief as the State Board deems appropriate under the circumstances.

The State Board, having considered the petition and evidence submitted therewith, together with the records of proceedings before the Regional Board and State Board finds as follows:

1. Dean Knight operates a sewage collection, treatment and disposal system serving the residents of Rolling Green Terrace subdivision. The system collects approximately 0.03 mgd of domestic waste from the residences of the subdivision, transports it to a 50,000-gallon septic tank for treatment, and discharges the effluent to two two-acre oxidation and evaporation-percolation lagoons.

2. The land on which the lagoons are located was leased by the City of Los Angeles and the Department of Water and Power of the City of Los Angeles (lessor) to Dean Knight on June 1, 1965, for a term of five years. The lease provides in part as follows:

"(3) Except by written consent of Lessor, the demised premises shall be used only as a site for operation of oxidation lagoons for treatment of effluent from a septic tank located on property owned by the Lessee.

. . .

"(13) Any holding-over after expiration of the term of this lease or of any renewal or extension thereof shall not constitute a renewal of this lease; but if with the consent of Lessor shall give rise to a tenancy from month to month only, at a monthly rental reckoned at the same rate as that prevailing at such expiration, payable monthly in advance, and in all other respects on the same terms and conditions as are herein provided.

. . ."

3. On March 30, 1965, the Regional Board adopted Resolution 65-1 prescribing waste discharge requirements for the disposal of waste waters from the Rolling Green Terrace subdivision through the collection, treatment and disposal system operated by Dean Knight.

4. On May 31, 1970, the lease for the lands on which the lagoons are located expired. The lease has not, at this time, been formally renewed. The right of Dean Knight, if any, in or to the leased premises is a matter of substantial dispute. Unresolved litigation is presently pending between Dean Knight and the lessor regarding their respective rights and duties under the lease.

5. On November 19, 1970, the Regional Board adopted Order No. 6-70-43 revising waste discharge requirements for Dean Knight and the Rolling Green Terrace subdivision which provides, in part, as follows:

"There shall be no surface flow or visible discharge of sewage or sewage effluent from the designated disposal site to adjacent land areas or surface waters."

6. On March 30, 1972, the Regional Board adopted Order No. 6-72-11 finding Dean Knight and the Rolling Green Terrace subdivision in violation of the requirement specified in Paragraph 5 above and ordering Dean Knight and the Rolling Green Terrace subdivision to cease and desist violating this requirement. Dean Knight did not petition for review of Order No. 6-72-11 within 30 days after March 30, 1972.

7. In or about October, 1972, Dean Knight contracted for the construction of a third lagoon on the leased lands in an attempt to provide additional lagoon capacity and thereby prevent the surface flow and discharge of sewage effluent from the lagoons to adjacent areas. On October 10, 1972, construction work on the third lagoon terminated as a result of a dispute between Dean Knight and the lessor regarding the rights of Dean Knight on the leased property.

8. On February 1, 1973, the Regional Board adopted Order No. 6-73-18, finding that Dean Knight and the Rolling Green Terrace subdivision was continuing to violate the aforementioned requirement and amending Order No. 6-72-11 to prohibit additional discharges to the sewer system operated by Dean Knight.

9. On March 30, 1972, when Order No. 6-72-11 was adopted, and on February 1, 1973, when Order No. 6-73-18 was adopted, there was a surface flow and visible discharge from the two existing lagoons to adjacent land areas.

10. Since the two existing lagoons are at capacity and overflowing, it necessarily follows that additional discharges to the sewer system operated by Dean Knight will increase the quantity of sewage overflowing the lagoons to the adjacent land areas.

11. Sewage overflowing from the existing lagoons is ponded on land adjacent to the lagoons by a protective berm installed by Dean Knight on a right of way specified in the lease mentioned above. This land is unfenced and is accessible to members of the public including hunters and children at play.

With respect to the specific contentions raised by Dean Knight in his petition, the Board further finds:

Contention: The Regional Board action in adopting Order No. 6-73-18 was inappropriate and improper because Regional Board Order No. 6-72-11, which the present order seeks to amend was itself inappropriate in that Dean Knight is not now, and never has been in violation of waste discharge requirements, as charged in Regional Board Order No. 6-72-11.

The gist of this contention is that the "designated disposal site" mentioned in Resolution 6-70-43 includes the land

immediately adjacent to the lagoons and behind the protective berm. We cannot accept this interpretation because of the following facts:

1. Resolution 6-70-43 on its face contains the following requirement:

"All wastewater shall be disposed of by evaporation and percolation from the designated disposal lagoons."  
(Emphasis Supplied).

In the light of this specific wording, it seems obvious to us that the "disposal site" also mentioned in Resolution 6-70-43 was intended to be limited to the lagoons, and that the term "disposal site" was not meant to include any property adjacent to the lagoons.

2. Dean Knight appears to have originally concurred in this interpretation. When the Regional Board adopted Order No. 6-72-11 on March 30, 1972, it was clear that the Regional Board did not consider the term "disposal site" to include any property other than the lagoons, and that the Regional Board considered any overflow from the lagoons to be a violation of requirements. Dean Knight did not seek any review of Regional Board Order No. 6-72-11 by the State Board as he could have done under Water Code Section 13320. On the contrary, Dean Knight undertook to construct a third lagoon so that the sewage effluent could be confined to lagoons. From the record before us, it appears that it was only after difficulties with the lessor prevented Dean Knight from constructing the third lagoon that Dean Knight objected to the interpretation of "disposal site" which excluded any property adjacent to the lagoons.

This contention also cannot be accepted because it depends upon the alleged invalidity of Order No. 6-72-11. The action of the Regional Board in adopting that order is reviewable only under Water Code Section 13320 which requires that the petition be filed within 30 days after the action. Dean Knight's petition was not filed until more than 11 months had elapsed.

The Board therefore finds that the overflow of sewage from the lagoons to adjacent land areas, even if confined behind the protective berm, is a continuing violation of Order No. 6-70-43.

Contention: The action of the Regional Board in adopting Order No. 6-73-18 was inappropriate and improper in that the Regional Board has placed waste discharge requirements solely against Dean Knight who cannot comply therewith because the City of Los Angeles Department of Water and Power, who owns the land upon which the alleged violations have occurred has prevented Dean W. Knight and Sons, Inc., from coming upon the land to make the necessary improvements and modifications.

At the core of all the issues raised in this petition is the continuing controversy between Dean Knight and the lessor of the property on which the lagoons are located over the right of Dean Knight to renew the lease or to construct an additional lagoon. The right of Dean Knight to go upon the leased land is unclear. It is also beyond the jurisdiction of either the Regional Board or the State Board to adjudicate. The argument of Dean Knight that this situation renders the action of the Regional Board in adopting Order No. 6-73-18 inappropriate overlooks one important consideration. At least during the time that Dean Knight has no established right to enter upon the leased

lands, there can be no reasonable assurance that the applicable waste discharge requirements can ever be met. Under the circumstances, Dean Knight not only cannot construct additional lagoon area, he cannot maintain the facilities that already exist. One of the basic concepts involved in establishing waste discharge requirements is that the discharger has the actual ability to control the discharge by controlling the means of treatment and disposal. Where, as in this case, it has become apparent that the discharger does not now have the ability to control his discharge by virtue of the fact that he does not have actual control over a substantial portion of his treatment system, it would be highly improvident to allow the discharger to increase already existing sewage flows until his ability to properly control the discharge has been established.

It is therefore the finding of the Board that the Regional Board action in adopting Order No. 6-73-18 was appropriate and proper even though the rights of Dean Knight in connection with the land leased from the City of Los Angeles Department of Water and Power are unclear and even though Dean Knight was prevented by his lessor from constructing an additional lagoon.

Contention: The action of the Regional Board in adopting Order No. 6-73-18 was inappropriate and improper in that the additional amount of effluent generated by connecting four new single-family residences per month while the Lahontan Board proceeds against the City of Los Angeles Department of Water and Power to correct the existing condition would be negligible and the harm created thereby leaves no reasonable relationship to the detriment to be suffered by Dean Knight and Sons, Inc., by virtue of Order No. 6-73-18.

Prohibitions or appropriate restrictions on additional discharges should be included in a cease and desist order if further additions in the volume of waste entering the sewer system would cause an increase in violation of waste discharge requirements. [California Administrative Code, Title 23, Chapter 3, Subchapter 9.1, Section 2244(b)].

The current waste flow to the lagoons from the Rolling Green Terrace subdivision is approximately 30,000 gallons per day. Assuming even minimal future connections to the sewer system involved, such increased connections would significantly increase the magnitude of violation of waste discharge requirements. For example, assuming four additional residential connections per month, with 3.3 persons per household, and with an average per capita daily flow of 80 gallons, the additional connections would result in the addition of approximately 32,000 gallons per month to the lagoons. Because the lagoons are at capacity, an additional overflow of approximately 32,000 gallons to adjacent land areas would result. Within six months, at the assumed rate of increase, the present overflow could be increased by approximately 192,000 gallons per month.

The seriousness of the overflow problem is also compounded by the fact that the quality of the escaping effluent diminishes as the quantity increases. This is because the quality of the overflowing sewage depends to some extent on the retention time of the waste in the system. Retention time will decrease as flow increases. Connections at the rate of four per

month would result in a decrease in the retention time of sewage within the lagoon of approximately ten percent in the first three months and a corresponding decrease in treatment effectiveness.

The inherent offensiveness of sewage bearing wastes goes without saying. Odorous vapors incident to the shallow ponding sewage are unpleasant. Shallow ponding of sewage wastes also serves as a breeding ground for insects, flies, and other disease bearing vectors of public health significance. We would not expect the Regional Board to close its eyes to the fact that the overflows from the lagoons are located in an area from which the public is not excluded, nor to the fact that increased overflow from the lagoons will enhance the possibility of public contact with inadequately treated sewage and result in increased danger from such contact.

For the above reasons, it is the finding of the State Board that the action of the Regional Board was appropriate.

Contention: The action of the Regional Board in adopting Order No. 6-73-18 was inappropriate and improper in that the Regional Board's failure to take appropriate action against the City of Los Angeles Department of Water and Power for the past two years has seriously prejudiced the position of Dean W. Knight and Sons, Inc., and is totally and wholly inconsistent with the action taken by said Board in connection with establishing reclamation and waste discharge requirements for Donald L. Tatum and the City of Los Angeles Department of Water and Power (Board Order No. 6-72-71) a situation parallel to the one presently before the Board.

Findings:

The State Board finds that the issues raised by this contention are not relevant to determination of the appropriateness of the action of the Regional Board in adopting Order No. 6-73-18 and, in any event, the Regional Board has now adopted

Order No. WQ 73-8

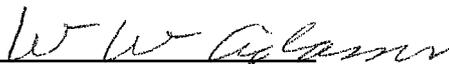
waste discharge requirements for the City of Los Angeles. (Board Order No. 6-73-30). In addition to the above, we wish to remind the petitioner that he is under a legal obligation to comply with all waste discharge requirements adopted by the Regional Board.

In the event the petitioner fails to comply immediately with Orders No. 6-73-18 and 6-72-11 of the Regional Board the Regional Board executive officer, pursuant to his delegated authority, should seek appropriate judicial enforcement.

Having concluded that Regional Board Order No. 6-73-18 prohibiting additional discharges to the sewer system operated by Dean Knight was appropriate and proper;

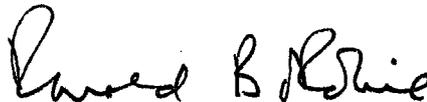
NOW, THEREFORE, IT IS ORDERED that the relief requested by Dean Knight be, and the same is, hereby denied.

Dated: April 19, 1973



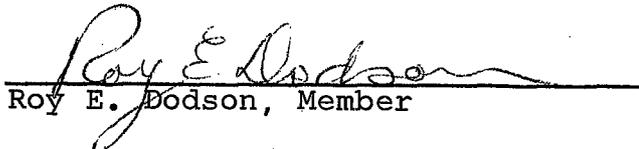
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W. W. Adams, Chairman



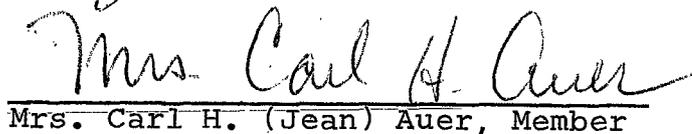
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Ronald B. Robie, Vice Chairman



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Roy E. Dodson, Member



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Mrs. Carl H. (Jean) Auer, Member



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W. Don Maughan, Member