

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

CITY OF BURBANK,

Plaintiff and Appellant,

v.

STATE WATER RESOURCES
CONTROL BOARD et al.,

Defendants and Appellants.

B150912

(Super. Ct. No. BS060960)

CITY OF LOS ANGELES,

Plaintiff and Appellant,

v.

STATE WATER RESOURCES
CONTROL BOARD et al.,

Defendants and Appellants.

B151175, B152562

(Super. Ct. No. BS060957)

ORDER MODIFYING OPINION
AND DENYING REHEARING
[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on August 14, 2003, be modified as follows:

1. On page 15, the first paragraph is deleted and the following paragraph is inserted in its place:

We construe the reference in part 122.44(d) of 40 Code of Federal Regulations to “effluent limitations guidelines or standards” to include not only “guidelines for effluent limitations” under title 33 United States Code section 1314(b) and “effluent standard[s]” under section 1317(a)(2), as Burbank and Los Angeles maintain, but also applicable standards under other provisions cited in the regulation, including section 1314(d). Part 122.44(d) refers to “effluent limitations guidelines or standards” under sections 1311, 1314, 1316, 1317, 1328, and 1345, not only those under sections 1314 and 1317 as Burbank and Los Angeles construe the regulation. Accordingly, we reject the argument that part 122.44(d)(1) does not apply to publicly owned treatment works.

2. On pages 32 and 33, the Disposition paragraph is deleted and the following paragraph is inserted in its place:

The judgments are reversed with directions to the superior court to enter new judgments consistent with this opinion granting the petitions for writ of mandate and directing Regional Board to comply with the statements of decision previously filed by the superior court with the exception of those sections of the statements of decision headed “Required Factor Analysis,” “Narrative Toxicity Standards and Water Quality Criteria,” “Compliance Schedules and Permit Modifications,” and “Administrative Procedures Act,” to the extent that those sections are inconsistent with our opinion, and also excepting the first sentence of the section headed “CEQA” and that part of the section headed “Order” vacating the Time Schedule Orders and requiring compliance schedules in the permits. Burbank’s and Los Angeles’s appeals from the orders denying attorney fees are dismissed as moot. Water Boards are entitled to costs on appeal.

There is no change in the judgment.

The petition for rehearing filed by City of Burbank and City of Los Angeles is denied.