

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of
Project Alpha to Review Order
No. 73-37 of the California Regional
Water Quality Control Board, Santa
Ana Region

Order No. WQ 74-1

BY THE BOARD:

On June 29, 1973, the California Regional Water Quality Control Board, Santa Ana Region (Regional Board) adopted Order No. 73-37 prohibiting the discharge of waste by Project Alpha (petitioner), at a proposed Class I disposal site near Corona, Riverside County.

On July 24, 1973, petitioner filed its petition with the State Water Resources Control Board (State Board) requesting review of Order No. 73-37. A supplemental petition was filed on August 27, 1973. Petitioner specifically requests that the State Board vacate and rescind Order No. 73-37 and adopt an order incorporating the Regional Board's staff recommendations prescribing waste discharge requirements for the site. Petitioner advances nine specific contentions in support of its allegation that the Regional Board's action was inappropriate and improper.

After review of the records of the Regional Board, and after consideration of the contentions of the petitioner, we have determined that the action of the Regional Board in adopting Order No. 73-37 was inappropriate and improper for the reasons hereafter stated.

I. BACKGROUND

Petitioner proposed to develop a Class I and Class II disposal site located two miles southwest of the City of Corona. A public hearing was held by the Regional Board on June 29, 1973, to consider the proposed site and appropriate waste discharge requirements for the site. During the hearing, the Regional Board staff and the petitioner offered evidence that the portion of the disposal area proposed as a Class I site (West Canyon) fulfilled the criteria for classification as a Class I disposal site. Some contrary evidence was introduced by a number of protestants. At the conclusion of the hearing, the Regional Board staff recommended approval of the West Canyon portion of the site as a Class I disposal site, subject to appropriate waste discharge requirements, and recommended that no discharge of Group 1 or 2 wastes be allowed in the East Canyon. The Regional Board, however, unanimously voted to prohibit discharge at the site.

At the time of its decision, the Regional Board did not make any factual finding or state any grounds for prohibition of the discharge at the proposed site.

II. CONTENTIONS OF PETITIONER AND FINDINGS

In addition to contending that the Regional Board failed to prescribe discharge requirements in accord with the evidence presented to it, the petitioner generally alleges prejudicial misconduct of members of the Regional Board, failure to comply with statutory obligations, denial of a fair and impartial hearing, and excess of jurisdiction by the Regional Board.

Among its other contentions, petitioner contends that the action of the Regional Board was improper because Order No. 73-37

was adopted contrary to the Regional Board's staff recommendations, without studied deliberations by the Regional Board members, and without factual findings to support the order.

A question is thus presented as to whether, and to what extent, the Regional Board members must make findings or otherwise provide support in the record for a decision which is in conflict with the recommendations of their staff.

Regional Board members are not compelled to act in accordance with the recommendations of their staff. The Regional Board, not the staff, is the decision-making authority. However, in exercising their discretion, Regional Board members must respect certain legal requirements to assure that those who are affected by their decisions have been fairly treated. To meet the requirement of fairness, the Regional Board, before acting on proposed waste discharge requirements or other proposed orders, must ensure that there is a factual and legal basis in the record for its decision and must indicate its reasoning and the factual basis for its decision to the affected parties.

The right of affected parties to fair treatment by administrative agencies is protected by the parties' right to judicial review of the agency's decision. But judicial review is virtually impossible where the agency has provided no record of the basis for its decision from which a court can determine whether the agency properly acted under its decision-making authority and whether its ultimate decision was based on sufficient factual material.

For this reason the courts, both state and federal, have been consistent in their demand that an administrative agency's reasons be clearly disclosed in the agency's records. As is said in Davis' Treatise on Administrative Law, Section 1605, "The practical reasons for requiring administrative findings are so powerful that the requirement has been imposed with remarkable uniformity by virtually all federal and state courts, irrespective of a statutory requirement. The reasons have to do with facilitating judicial review, avoiding judicial usurpation of administrative functions, assuring more careful administrative consideration, helping parties plan their cases for rehearings and judicial review and keeping agencies within their jurisdiction." (See also Wichita R. & L. Co. v. Public Utilities Comm., 260 U.S. 48, 43 Sup.Ct. 51; Atchison, T. & SF. Ry. Co. v. Commerce Comm., 335 Ill. 624, 167 N.E. 831; United States v. Chicago, M. St. P. & P.R. Co., 294 U.S. 499, 55 Sup.Ct. 462; Beaumont, S.L. & W. Ry. Co. v. United States, 282 U.S. 74, 51 Sup.Ct. 1; Swars v. Council of City of Vallejo, et al., 33 Cal.2d 867, 206 P.2d 355.

When a regional board disagrees with the staff's recommendation, it might take any one of a number of courses of action to insure creation of a proper record. First, at the conclusion of the hearing the members could individually explain their intended votes and the reasons for them, including the facts which they find most convincing. This method has several disadvantages inasmuch as it allows regional board members little time for reasoned consideration of the evidence presented at the hearing and their individual expressions of views may not indicate with sufficient clarity the

basis for their decision. Second, the members might articulate a number of questions which they feel remain unanswered (if this is the case) and ask for a continuation of the hearing. Third, the members could indicate to the staff what they feel the findings should be and ask that revised written findings and a revised order be presented to the Board at its next meeting.

We have examined the transcript of the hearing in this matter and find that the Regional Board failed to set forth appropriately the reasons for its action in adopting Order No. 73-37. On the contrary, the record discloses that the Regional Board, upon close of the hearing, immediately moved and adopted unanimously a motion prohibiting the discharge without explanation. There were no findings or indication for the record as to the reasoning or factual basis for the decision.

Not only was the petitioner thereby deprived of necessary notice of the reasons and grounds for Regional Board action, we are confronted with a record which is incomplete and which affords no indication to us of the reasoning and factual basis for the order under review.

In the light of the order hereafter made, it is not necessary or appropriate at this time to consider the remainder of petitioner's contentions.

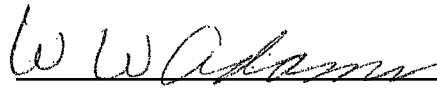
III. CONCLUSIONS

After review of the record and consideration of contentions of the petitioner, the State Board concludes that the action of the Regional Board in adopting Order No. 73-37 was inappropriate and improper because of its failure to explain the reasons for the order and the factual basis for them.

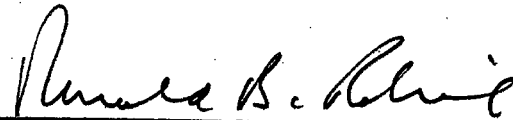
NOW, THEREFORE, IT IS ORDERED:

Order No. 73-37 of the Regional Board is set aside and the matter of determination of appropriate site classification, if any, for petitioner's proposed disposal site and determination of appropriate waste discharge requirements for the proposed site is remanded to the Regional Board for further consideration in light of the views expressed herein.

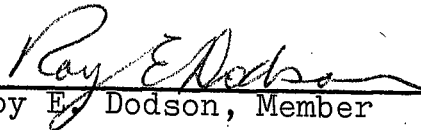
Dated: January 17, 1974



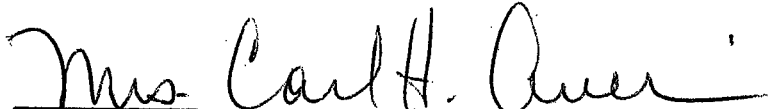
W. W. Adams, Chairman



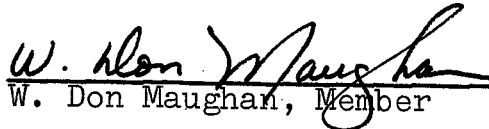
Ronald B. Robie, Vice Chairman



Roy E. Dodson, Member



Mrs. Carl H. (Jean) Auer, Member



W. Don Maughan, Member