

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of
Rice Road Land Reclamation Company,
Inc., Seeking Review and Stay of
Cease and Desist Order No. 78-207,
California Regional Water Quality
Control Board, Central Valley
Region. Our File No. A-214.

Order No. WQ 79-7

BY THE BOARD:

Rice Road Land Reclamation Company, Inc., (petitioner) operates a solid waste disposal site about one mile north of the City of Fresno, California. On November 10, 1969, the California Regional Water Quality Control Board, Central Valley Region (Regional Board) adopted Resolution No. 70-89 prescribing waste discharge requirements for disposing of wastes at the site. On October 27, 1978, the Regional Board adopted Cease and Desist Order No. 78-207 requiring the petitioner to "...cease and desist immediately from discharging wastes contrary to requirements...." and on November 24, 1978, the petitioner filed a petition seeking review by the State Water Resources Control Board (State Board) of the Regional Board's adoption of Order No. 78-207 and, concurrently, seeking a stay of the effect of the Order. On January 25, 1979, the State Board adopted Order No. WQ 79-2 denying the request for stay of the effect of Cease and Desist Order No. 78-207.

I. BACKGROUND

In its Cease and Desist Order, the Regional Board found the petitioner in violation of Provision 5 of Resolution No. 70-89 which states:

"Class II materials shall not be placed below an elevation of 285 feet above mean sea level, USGS datum, and shall not be placed within 50 yards of sites where Class III materials are being deposited or that will be used to deposit Class III materials. Provided that upon completion of deposition and covering of Class III materials then Class II materials may be placed over such Class III materials and above elevation 285 feet..."

Provision 3 of the Resolution states:

"[t]he discharge of Class II materials will be limited to grass clippings, garden trimmings, leaves, generally, fibrous, organic materials and Class III materials and the discharge at no time shall contain liquid or soluble solid materials of a toxic nature, dead animal carcasses, manures, sewage treatment or septic tank residues, garbage or other putrescible (sic) materials, scrap metal of any nature, or paint sludge."

The Cease and Desist Order directed the discharger to "...cease and desist from discharging waste contrary to..."

Provision 5. Other provisions of the Order directed the petitioner to establish bench marks clearly identifying the 285 foot elevation and to undertake a study to identify the location and amount of nonconforming materials disposed of below elevation 285.

The original discharge requirements for the site in question (Regional Board Resolution No. 70-89) were based upon Regional Board Resolution No. 69-216 which divided sites for the disposal of solid or liquid waste into three classes and indicated the types of materials appropriate for disposal in each class of site. While Resolution No. 69-216 has been superseded, contemporary regulations of the State Board governing waste disposal to land utilize the same system for classifying disposal sites.^{1/} Current regulations, however, make additional refinements to the earlier scheme for classifying disposal sites and

^{1/} Subchapter 15, Chapter 3, Title 23, California Administrative Code.

the materials that may be placed in such sites. Further discussion of this site will be in those terms used in current regulations.

II. CONTENTIONS AND FINDINGS

The contentions of the petitioner and our findings relative thereto are as follows:

1. Contention: Petitioner contends that when adopting Provision 5, the Regional Board was of the opinion that no water problems would occur so long as Group 2 wastes were deposited at any point above the groundwater visible in the disposal pit.

Findings: The quoted materials which follow are taken from the written staff report to the Regional Board:

"...there is direct lateral and vertical continuity with useable groundwater at the site and it does not naturally conform to criteria for a Class II site. It is located at the foot of a bluff about 700 yards east of the San Joaquin River and is formerly the site of a sand extraction operation. That operation left the site with a pit covering an area of about ten acres which extends below the groundwater elevation so that groundwater is exposed at the bottom of the pit. The Department of Water Resources reports the historical high groundwater elevation for the area to be about 274 feet above the sea level. The elevation of the water in the pit was determined to be about 261 feet above sea level on 12 September 1978. The soils are a Hanford sandy loam underlain with loose gravel and cobblestones. These deposits are considered to be highly permeable.

During the development of Waste Discharge Requirements for the operation in 1969, the California Department of Water Resources and the State Department of Health expressed concern regarding the disposal of Group 2 materials at the site and the potential for groundwater degradation. Waste Discharge Requirements which addressed the concern of all interested agencies were subsequently developed and adopted by the Board on 10 November 1969 under

Resolution No. 70-89. The Waste Discharge Requirements include provisions to accomplish the following:

1. limit Group 2 materials allowed for disposal at the site to fibrous, organic materials, leaves, garden trimmings and grass clippings
2. prohibit the direct discharge of liquid or decomposable solid wastes, including leachate to groundwaters
3. prohibit the discharge of Group 2 wastes below elevations 285 feet, USGS datum, and within 50 yards of sites where Group 3 wastes are being deposited.

It was the purpose of these and other provisions of the Waste Discharge Requirements to provide protection of the groundwater. Because the site does not conform to criteria for a Class II disposal site, protection of groundwater is dependent on the discharger's action to accomplish the provisions of the Waste Discharge Requirements. The specification of a limiting elevation is to prevent deposition of Group 2 wastes that may be in direct contact with groundwater and to provide an intervening level of soil and other Group 3 materials between any Group 2 wastes and the groundwater. The provision for spacing between Group 3 and Group 2 operations is to provide for positive separation of the activities and to assist any surveillance that may be required."

Neither the foregoing quotation nor the evidence introduced to prove the violations of waste discharge requirements were contradicted by the petitioner. Rather, the petitioner contended that adoption of an enforcement order would be inappropriate. The reasons why the petitioner believed an enforcement order to be inappropriate and what the record of the hearings indicates is set forth below.

The petitioner's attorney, Mr. Luppino, stated that he had represented the petitioner during the 1969 hearing and that at the time waste discharge requirements were adopted both the Regional Board and the petitioner believed that the 285-foot elevation referred to in Provision 5 was that contour interval being the bottom of the pit slightly above the groundwater visible

in the 1964, USGS, 7½ minute series, topographic map for Lane's Bridge, California.

Upon examination, Mr. Luppino indicated that the preceding representation was based solely upon his recollection; that he had no notes, correspondence, memorandum, or the like contemporaneous with the adoption of the Resolution from which to refresh his memory or to substantiate his interpretation. Regional Board staff testified that its files did not contain any information tending to substantiate Mr. Luppino's recollection. Examination of the witnesses by Dr. Behnke, a member of the Regional Board, established that the topographic map referred to in the witness' testimony showed the bottom elevation of the pit, immediately above groundwater, to be about 275 feet above sea level.

The Regional Board staff pointed out that the reading of Provision 5 suggested by Mr. Luppino would be inconsistent with the past and current Water Quality Control Plan.^{2/}

2/ The Water Quality Control Plan Report, Tulare Lake Basin (5D), 1-5-52, provides in part:

Unsaturated solids or material between the bottom of a Class II solid waste disposal site and the maximum elevation of the water table that may be expected (or as it may be reasonably controlled) should meet the following criteria:

<u>Minimum Depth to Groundwater (feet)</u>	<u>Permeability (cm/sec)</u>
15	-4 10
5-15	-8 -4 10 -10
5	-8 10

Even if the evidence overwhelmingly supported Mr. Luppino's recollection, this language would require us to direct the Regional Board to revise the petitioner's waste discharge requirements in a manner consistent with the Regional Board's current reading of Resolution No. 70-89.

Finally, Mr. Luppino stated that since 1969 Group II materials had been received at the disposal site and deposited below elevation 285, and that the Regional Board staff had heretofore not made an issue of where these materials were placed. He then suggested that the failure of the Regional Board staff to take issue with where Group II materials were deposited for the preceding nine years was evidence that it was understood the petitioners could deposit Class II materials below 285 feet.

Examination of the Regional Board files indicates that staff of the Regional Board made infrequent inspections until problems were encountered in 1978. The memoranda of inspections, however, provide no support for Mr. Luppino's suggestion. Further, the fact that the staff of the Regional Board had brought this matter to the Regional Board requesting adoption of the Cease and Desist Order indicates staff did not concur with Mr. Luppino's understanding.

Comments by individual members of the Regional Board and the Cease and Desist Order finding the petitioners in violation of Provision 5 indicate the Regional Board was unpersuaded that Provision 5 did not mean exactly what it said.

The petitioner's contention that the Regional Board, when adopting Provision 5, was of the opinion that no water quality problems would occur so long as Group 2 wastes were deposited at any point above the groundwater visible in the disposal pit is unsupported by the petition or the record before the Regional Board.

2. Contention: The petition contends that the Regional Board's adoption of Cease and Desist Order No. 78-207 was inappropriate because "...no evidence was presented to the Board showing that underground water had been contaminated or that there was any type of present danger of the underground water being contaminated by the deposit of modified Class II materials below elevation 285 feet."

Finding: When enacting the Porter-Cologne Act, the legislature found "...that activities and factors which may affect the quality of the waters of the state shall be regulated to attain the highest water quality which is reasonable..."^{3/} legislature required, further, that the Regional Board adopt waste discharge requirements as to the nature of any proposed discharge of waste that will protect water quality.^{4/} In 1969, the Regional Board adopted Resolution No. 70-89 prescribing such requirements for the petitioner's disposal pit. Finally, the legislature has provided:

"When a regional board finds that a discharge of waste is taking place or threatening to take place in violation of requirements or discharge prohibitions prescribed by the regional board or state board, the board may issue an order to cease and desist and direct that those persons not complying with the requirements or discharge prohibitions (a) comply forthwith, (b) comply in accordance with a time schedule set by the board, or (c) in the event of a threatened violation, take appropriate remedial or preventive action."^{5/}

In accordance with this provision, on October 27, 1978, the Regional Board found the petitioner in violation of waste

^{3/} Section 13000, et seq., California Water Code.

^{4/} Section 13263(a), California Water Code.

^{5/} Section 13301, California Water Code.

discharge requirements and adopted Cease and Desist Order No. 78-207 directing the petitioner to comply, specifically, with Provision 5 of Resolution No. 70-89. The petitioner now suggests that Provision 5 meant something entirely different from its plain reading and that the Regional Board should not direct compliance with its own waste discharge requirements until actual degradation of groundwater occurs as a result of the petitioner's non-compliance.

We reject any suggestions that a Regional Board should not adopt an order requiring compliance with waste discharge requirements prior to actual water quality degradation. Any other approach would patently conflict with the legislature's intent, when adopting the Porter-Cologne Act, that the Regional Boards implement a regulatory program aimed at preventing the degradation of water quality. Even assuming that the petitioner has for some years deposited Group 2 wastes below elevation 285 and there is no evidence of water quality degradation, it does not follow that the waste discharge requirements were unnecessarily stringent and should not be enforced. In most portions of California, Group 2 wastes will usually take more than 50 years to stop decomposing and producing leachate. Further, the potential for water degradation may persist long after decomposition is completed if the leachate must pass through other materials before reaching groundwater.^{6/}

^{6/} See comment on Section 2500(h), Subchapter 15, Title 23, California Administrative Code at page 21, Waste Discharge Requirements for Nonsewerable Waste Disposal to Land, January 1978, California State Water Resources Control Board.

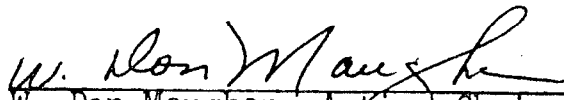
III. CONCLUSIONS

After review of the record and for the reasons herein stated, we conclude that the Regional Board's adoption of Cease and Desist Order No. 78-207 was appropriate and proper and that this petition should be denied.

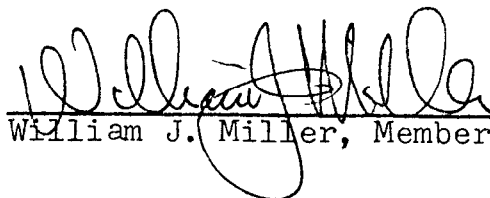
IV. ORDER

IT IS HEREBY ORDERED that the petition in this matter is denied.

Dated: FEB 15 1979



W. Don Maughan, Acting Chairman



William J. Miller, Member



L. L. Mitchell, Member