

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of
Simonson Lumber Company, et al.,
for Review of Orders Nos. 78-70,
72, 73, 74 and 75, California
Regional Water Quality Control
Board, North Coast Region. Our
File No. A-216.

Order No. WQ 79-19

BY THE BOARD:

Simonson Lumber Company, Simpson Timber Company, Rellim Redwood Company, Coombs Tree Farms, Western Helicopter Service, Evergreen Helicopter and California Forest Protective Association (Petitioners) are involved in or work with the silviculture industry in Humboldt and Del Norte Counties. The petitioners use phenoxy herbicides (acid salt, and ester formulations of 2,4-D; 2,4,5-T; and 2,4,5-TP (silvex)) in their routine management of forest lands. These phenoxy herbicides are generally applied to forest lands via aerial application.

On December 7, 1978, the California Regional Water Quality Control Board, North Coast Region (Regional Board) adopted Orders Nos. 78-70, 72, 73, 74 and 75 which were amended waste discharge requirements. The amended requirements contained the following prohibition:

"There shall be no discharge of detectable levels of 2,4,5-T or 2,4,5-TP to waters of the state. The discharge of 2,4-D to waters of the state shall not exceed 10 ppb."

On January 5, 1979, a petition for review was filed with the State Water Resources Control Board (State Board) contending that the orders were inappropriate because:

1. Scientific evidence does not support the orders;
 - a) No harm has been documented from past use;
 - b) Laboratory proof of danger is based upon experiments at exaggerated dosages;
 - c) The toxic component of these herbicides (TCDD or dioxin) photodegrades; and
 - d) Other federal and state agencies have concluded these herbicides may be used safely.
2. The Regional Board did not balance economic harm against environmental hazard;
3. The Regional Board does not have authority to preclude the use of herbicides regulated by the California Department of Food and Agriculture; and
4. The Regional Board failed to provide a hearing complying with due process requirements.

I. BACKGROUND

The Regional Board staff began discussions with the County Agriculture Commissioners regarding the use of phenoxy herbicides on forests in the summer of 1974. These discussions arose from public complaints concerning the possible contamination of waters of the State due to the aerial application of these herbicides. The Regional Board held a public hearing in June 1977 and concluded that the Department of Food and Agriculture's (Department) rules and their implementation of rules did not provide adequate protection to surface waters. The Regional Board

then requested that the Department adopt regulations by March 1, 1978, which would provide this necessary protection. The Department held five public hearings in the North Coast area and created a phenoxy herbicide investigation team which made 47 recommendations to the Director of the Department.

The Director of the Department responded to these recommendations by establishing conditions which the County Agriculture Commissioners were to impose in the pesticide permit process.

The Regional Board determined that the permit process used by the County Commissioners continued to have shortcomings and did not provide assurance that water quality was being protected sufficiently. On April 20, 1978, the Regional Board adopted six waste discharge requirements to control the discharge of phenoxy herbicides to waters of the State resulting from aerial application of these materials to forested lands. The requirements had the following prohibition:

"The discharge of phenoxy herbicides to waters of the state shall not exceed 10 parts per billion at the downstream edge of application zone and shall not be detectable at any point where waters are withdrawn for domestic use."

On October 25, 1978, the Regional Board held a public hearing to determine if levels of detection of the phenoxy herbicides should be placed at zero in the waste discharge requirements. On December 7, 1978, the Regional Board amended the six

waste discharge requirements which were adopted on April 20, 1978 to contain the following prohibition:

"There shall be no discharge of detectable levels of 2,4,5-T or 2,4,5-TP to waters of the state. The discharge of 2,4-D to waters of the state shall not exceed 10 ppb."

II. ACTION TAKEN BY THE ENVIRONMENTAL PROTECTION AGENCY (EPA)

On April 21, 1978, the EPA announced its notice for the Rebuttable Presumption Against Registration (RPAR) of pesticide products containing 2,4,5-T. the RPAR process may or may not lead to the cancellation of registration for a registered pesticide. The process provides for a period to submit evidence regarding the pesticide and in the case of 2,4,5-T over 2,000 comments were received. EPA has not reached a formal decision through the RPAR process regarding 2,4,5-T.

During the RPAR process reports were received from women living in the vicinity of Alsea, Oregon that miscarriages had occurred shortly after 2,4,5-T had been sprayed in the forest areas near their residence. The EPA then sponsored an epidemiological study using Alsea as a study area. Due to the results of this study, and other evidence, Douglas M. Costle, Administrator of EPA, on February 28, 1979, issued an emergency order suspending immediately the forestry, right-of-way, and pasture uses of 2,4,5-T products and the forest, right-of-way, pasture, home, aquatic and recreational uses of silvex (2,4,5-TP) products. Registrants affected by the emergency suspension may request an expedited hearing before the EPA. Such a hearing has been requested by at least one registrant.

III. CONCLUSIONS

After consideration of this matter, we conclude that this petition should be dismissed without prejudice. We have drawn this conclusion because it would be appropriate for EPA to hold hearings and take whatever action it feels appropriate regarding its suspension of 2,4,5-T and silvex (2,4,5-TP) on forest lands prior to any action regarding this subject by the State Board. Also recent amendments to the State Board's regulations provide that a petition not resolved within 270 days of the date a complete petition is filed is automatically deemed denied (Title 23, California Administrative Code, Chapter 3, Subchapter 6, Section 2052(d)). Although these regulations do not strictly apply to the petition in this case, since it was filed before the effective date of the regulations (March 16, 1979), it is nevertheless the policy of the State Board not to hold petitions in indefinite abeyance.

In the event that the emergency suspension of 2,4,5-T and/or silvex (2,4,5-TP) is set aside or otherwise altered by a final decision of EPA or a court of competent jurisdiction which is not subject to appeal and which permits the use of these phenoxy herbicides on forest lands, the petitioners may refile their petition without prejudice to their cause on or before 30 days from the date such decision becomes final and not subject to further review. Any refiled petition and any participation by interested parties other than the petitioners in the resolution of that petition will be subject to the petition regulations in effect at the time the new petition is filed.

IV. ORDER

IT IS HEREBY ORDERED that this petition is dismissed without prejudice as discussed in Section III (Conclusions) of this Order.

Dated: April 19, 1979

/s/ W. Don Maughan
W. Don Maughan, Chairman

/s/ William J. Miller
William J. Miller, Member

/s/ L. L. Mitchell
L. L. Mitchell, Member

/s/ Carla M. Bard
Carla M. Bard, Member