

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of)
)
THE VENTURA COUNTY CITIZENS TO)
STOP TOLAND LANDFILL)
)
For Review of Stay of Rescission)
of Requirement Contained in)
Order 96-053, Waste Discharge)
Requirements for the Toland Road)
Landfill, by the California)
Regional Water Quality Control)
Board, Los Angeles Region.)
SWRCB File A-1067.)

ORDER: WQ 97-05

BY THE BOARD:

I. INTRODUCTION

On July 15, 1996, the Regional Water Quality Control Board, Los Angeles Region (Regional Water Board) adopted Order 96-053, which contains waste discharge requirements issued to the Ventura Regional Sanitation District (District) for the expansion of the Toland Road Landfill. The waste discharge requirements contained a provision (F.2) that prohibited the VRSD from placing municipal solid waste closer than 200-feet to the trace of the Culbertson Fault as shown on Plate 2 of the Fugro-McClelland study entitled "Fault Exploration and Characterization Study - Toland Road Landfill Expansion" dated December 1992, unless approved by the executive officer. To the west of the landfill, the Culbertson

Fault is mapped as a Holocene fault.¹ The District conducted studies subsequent to the issuance of Order 96-053. The Executive Officer of the Regional Water Board determined that there was no compelling evidence of Holocene faulting at the site and rescinded the setback requirement contained in Provision F.2 in a letter dated November 25, 1996. The November 25, 1996, letter acknowledged that the recent studies indicated that the Culbertson Fault may possibly project north of the existing landfill and permitted the District to proceed with grading of the expansion area with the condition that the District suspend grading if it discovered any evidence of Holocene faulting during grading activities.

On December 24, 1996, the petitioner, the Ventura County Citizens to Stop Toland Landfill, filed a timely petition with the State Water Resources Control Board (State Water Board). The petition also included a request for stay of the removal of that portion of Provision F.2 calling for a 200-foot setback from the inferred trace of the Culbertson Fault. The petitioner subsequently amended its original request for stay. These amendments requested a stay of the rescission of the setback requirement and of any grading of the lateral expansion areas, including the northern expansion area.

¹ A Holocene fault is a fault which is or has been active during the last 11,000 years. (Title 23, California Code of Regulations, § 2601.)

II. DISCUSSION

Preliminarily, there is a dispute about the breadth of the action of the Regional Water Board and, therefore, the scope of the stay request. The petitioner contends that the Regional Water Board's November 25, 1996, action encompasses not only the rescission of the setback requirement but also the Regional Water Board's decision to allow grading in the expansion areas, including the northern expansion area.² Most, if not all, of what is referred to as the northern expansion area falls outside of the 200-foot setback area.³ The petitioner argues that since the November 25, letter acknowledges the possibility that the Culbertson Fault may extend to the north, that grading in that area should not be permitted because it could destroy valuable evidence of Holocene faulting.

A review of the November 25 letter indicates that it was written to rescind that portion of Provision F.2 that called for a 200-foot setback from the inferred trace of the Culbertson Fault. While the November 25 letter acknowledged that the Culbertson Fault may project to the north of the landfill and allowed expansion activities to continue, this language, in our opinion, merely

² In support of its position, the petitioner references another petition for State Water Board review and request for stay filed by the petitioner in August of 1996, after the adoption of Order 96-053. That petition raises issues regarding faulting throughout the entire site. That petition was not referenced in the petition received December 24, 1996, or in any accompanying documents, and the State Water Board does not have any record of receiving such petition.

³ A portion of the setback area does fall within an area that is referred to by the District as the northern phase.

justified the decision to remove the setback requirement. At the evidentiary hearing held on May 15, 1997, the parties provided evidence and argument about the northern expansion area, as well as the setback area. The issue of the scope of the stay request is moot because the evidence contained in the record does not support the granting of a stay of either the removal of the setback requirement or of any grading activities that fall outside the setback area, including those in the northern expansion area.⁴

Water Code section 13321 authorizes the State Water Board to stay the effect of Regional Water Quality Control Board decisions. The State Water Board's administrative regulations, recognizing the extraordinary nature of a stay remedy, place a heavy burden on the seeker of a stay:

"(a) A stay of the effect of an action of a regional board shall be granted only if petitioner alleges facts and produces proof of:

(1) Substantial harm to petitioner or to the public interest if a stay is not granted,

(2) A lack of substantial harm to other interested persons and to the public if a stay is granted and

(3) Substantial questions of fact or law regarding the disputed action." (Title 23, California Code of Regulations, § 2053.)

⁴ When reviewing the merits of the issues raised in the petition, the scope will not be limited. Applicable regulations allow the State Water Board to consolidate proceedings that are legally or factually related. (Title 23, California Code of Regulations, Section 2054.) The Cities of Fillmore and Santa Paula (Cities) filed a petition for State Water Board review after the Regional Water Board adopted Order 96-053. The Cities challenged all expansion activities and argued that further seismic investigation was required in all expansion areas. Through subsequent amendments to their petition, the Cities incorporated by reference those arguments made by the petitioner that relate to faulting in the northern area.

Petitioner has not met this heavy burden.

III. CONTENTIONS AND FINDINGS

1. **Contention:** The petitioner contends that it and the public interest will be substantially harmed unless a stay is granted because the lateral expansion at the Toland Road Landfill and all grading activities associated with it will destroy any evidence of Holocene faulting.

Finding: The petitioner has failed to show that it or the public interest will be substantially harmed if a stay is not granted. The petitioner has not demonstrated that grading will disturb evidence of Holocene faulting, within the setback area, during the time period before this Board can address the merits of the petitioner's contentions.

The District testified that there are four different expansion areas at the Toland Road Landfill. (See attached exhibit.) The setback area overlies a portion of three of these phases--Phase IIA, Phase III, and Phase IV. The District testified that grading at Phase IIA is complete. Therefore, it is too late to stay any grading activities in that particular area.⁵ The District testified that it is currently excavating a portion of Phase III as a borrow area. This particular area of Phase III, however, lies north of the area of Phase III that intersects the setback area. Furthermore, the petitioner did not offer any

⁵ The District testified that it did not encounter any evidence of Holocene faulting while grading this phase.

evidence demonstrating that excavating in this particular area of Phase III would destroy any materials that may demonstrate Holocene faulting. The District testified that it will not begin grading activities in Phase III until one to three years and that grading activities will not take place in Phase IV until 10 to 15 years from now. Such grading will be performed as base grading for liner construction. This Board will be able to consider the merits of the petition before grading in Phase III and IV begin.

The District testified that it will begin grading Phase IIB in the fall of 1997. Even though grading in this area is not, in our opinion, within the scope of this stay request, it is worth noting that the petitioner has not demonstrated that grading in this area will necessarily destroy evidence of Holocene faulting. The petitioner has not identified any materials in Phase IIB that could reveal evidence of Holocene faulting. Even if there are materials in this phase that could reveal the presence of Holocene faulting, such materials would not be destroyed during grading because the Regional Water Board required the District to suspend grading activities if evidence of Holocene faulting was revealed. The Senior Engineering Geologist from the Regional Water Board who is responsible for overseeing the activities at this landfill testified at the hearing. He stated that he has been at the site on several different occasions inspecting trenches and observing grading activities and that the Regional Water Board pays a lot of attention to excavation from a geological standpoint.

Observations by licensed professional geologists should be effective to disclose any evidence of Holocene faulting.

The petitioner did identify deposits that it believes could contain evidence of Holocene faulting. These deposits are located in the central area of the western boundary of the landfill. Since these deposits are located just west of the boundary line of Phase III and since Phase III will not be graded until one to three years from now, there is no risk of disturbing these deposits before the time that this Board can consider the merits of the petition.

2. **Contention:** The petitioner alleged that neither the District nor the public would be substantially harmed by the granting of a stay because the Toland Road Landfill and other nearby landfills have sufficient capacity to accommodate the waste accumulated during the delay of the expansion activities. Based on information contained in the District's Environmental Impact Report, the petitioner concluded that the District could continue to operate and place waste vertically on its existing footprint for approximately 4.25 years.

Finding: The petitioner has failed to show a lack of substantial harm to the District and the public.

The District provided evidence refuting the petitioner's contention. The District testified that capacity in Phase I will be exhausted by the end of this summer. The District stated that grading in Phase IIA was scheduled to be completed by May 16, 1997.

The record indicates that materials for the liner, leachate collection and recovery system and gas extraction system have been ordered and installation work relating to the preparation of Phase IIA is scheduled to be completed during July 1997. The District stated that it will begin placing waste in Phase IIA beginning this summer and that Phase IIA should provide sufficient capacity until the end of spring of 1998. The District testified that it does not intend to place waste in the area of Phase IIA that intersects the setback area, but that any stay that has some ramification on the utilization of Phase IIA could cause the landfill to close this summer, after Phase I has reached capacity.

The District also provided testimony regarding the harm to the District if grading in the northern expansion area was prohibited. When Phase IIA runs out of capacity at the end of spring of 1998, the District stated that it plans to place waste in Phase IIB. The District stated that any delay in excavation of Phase IIB would disrupt the entire process and prevent the District from disposing of waste in Phase IIB by spring of next year. The District concluded that a delay in the expansion Phase IIB would cause the landfill to close in the spring of 1998.

The District testified that its Solid Waste Department budget is funded by operating revenue from tipping fees. The District stated that if the landfill were closed, revenues would be cut off forcing the district to lay off employees and preventing the District from meeting future needs of member agencies.

Evidence in the record indicates that tipping fees at other nearby landfills are higher than those imposed by the Toland Road Landfill. The petitioner stated that the public will not be harmed by disposing of waste at other nearby landfills because any increased cost will be borne by transfer station operators. This conflicted with testimony offered by cities within Ventura County that currently dispose of waste at the Toland Road Landfill. They generally argued that increased waste disposal costs would ultimately be shouldered by the ratepayers.

The petitioner has failed to meet its burden of showing that the District and the public will not be substantially harmed if a stay is granted.

IV. CONCLUSION

The request for a stay should be denied because petitioner has failed to establish that it or the public interest

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will be harmed if the stay is not granted and that the District and public would not suffer substantial harm if the stay is granted.

V. ORDER

IT IS HEREBY ORDERED that the request for stay is denied.

CERTIFICATION

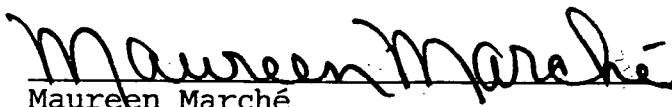
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 4, 1997.

AYE: John Caffrey
Marc Del Piero
Mary Jane Forster
John W. Brown

NO: None

ABSENT: James M. Stubchaer

ABSTAIN: None



Maureen Marché
Administrative Assistant to the Board