

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 79-2

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.

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 of 285 feet...."

The 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 benchmarks 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.

II. REQUEST FOR STAY

Regulations of the State Board provide in part:

"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) lack of substantial harm to other interested persons and to the public interest if a stay is granted and (3) substantial questions of fact or law regarding the disputed action. A petition for a stay shall be supported by affidavit of a person or persons having knowledge of the facts alleged. Upon a documented showing by petitioner that he complies with the prerequisites for a stay, the state board will hold a hearing. A request for a stay may be denied without a hearing.^{1/}

The petitioner seeks a stay of the effect of the Cease and Desist Order. In effect, the requested stay order would suspend the operative effect of Provision 5 providing that Class II materials must be deposited above 285 feet.

^{1/} Section 2053(a), Subchapter 6, Chapter 3, Title 23, California Administrative Code.

In his request for a stay the petitioner alleges, but produces no substantiation by affidavit as required by State Board regulations, that there will be substantial harm to the petitioner if a stay is not granted. Although inconclusively supported it is stated that it will not be economically feasible for the petitioner to continue operating the disposal site if Class II wastes may not be deposited below 285 feet. The Regional Board's Cease and Desist Order does not require closure of the site. However, based upon petitioner's assumption that he will have to close down if not allowed to continue depositing below 285 feet, petitioner has submitted a number of letters from business people in the Fresno area stating that it would be a hardship to them if the dump were closed. The petitioner has also submitted a statement regarding the value of the land and certain equipment used on the site but does not indicate how much of this value would be lost if the site were to be closed nor the basis of his assumption that it must be closed if the Regional Board's order is not stayed.

The petitioner also states "[t]here would be no harm to the public if a stay is granted in that during the ten (10) year's operation of the disposal site to date there has been no change in the quality of the underground water and none is anticipated in the immediate future."^{2/} This assertion is not borne out by any meaningful documentation by the petitioner. The record of the Regional Board's hearing, however, does contain a statement to the effect that water samples from three wells one-quarter mile from the disposal site did not indicate the presence of contaminants. Mr. McIntrye from the Department of Water Resources

^{2/} Emphasis added.

testified, however, that the absence of contaminants in these samples did not mean groundwaters were not or would not become contaminated from wastes previously deposited. Finally, the fact that the petitioner does not anticipate any degradation of the groundwater in the immediate future, does not meet the requirement that the petitioner must allege and prove there will be a lack of substantial harm to other interested persons and the public interest. The only question of fact raised in the request for a stay indicates "[t]here is a question as to the effects of the deposit of modified Class II materials below elevation 285 in the underground water and whether or not petitioner should be allowed to deposit modified Class II material below elevation 285." In effect, the petitioner now requests the State Board to stay the effect of an order of the Regional Board adopted in 1969.

III. CONCLUSIONS

The petitioner has not produced documented proof that he complies with the prerequisites for a stay. Although he has produced some proof that there would be harm to the public interest if the site were closed he has not documented his assertion that the site must be closed if no stay is granted pending a decision on the merits of this case by the State Board. The bare assertion by the petitioner that there will be no immediate harm to the public if a stay is granted is not sufficient. Deposition of Class II materials within the area reached by historically high groundwater levels is generally not advisable due to the danger of long-term decomposition resulting in degradation of groundwater quality. We feel this significant potential for groundwater degradation represents a significant threat of

harm to the public interest if a stay were granted. The petitioner has not satisfactorily substantiated his assertions that he will be substantially harmed if a stay is not granted and the only issue of fact raised by the petitioner is an issue that should have been raised nine years ago.

IV. ORDER

IT IS HEREBY ORDERED that the request for a stay of the effect of Cease and Desist Order No. 78-207 is denied.

Dated: JAN 25 1979

ABSENT

John E. Bryson, Chairman

W. Don Maughan
W. Don Maughan, Vice Chairman

William J. Miller
William J. Miller, Member

L. L. Mitchell
L. L. Mitchell, Member