

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of the)
TRI/VALLEY GROWERS and OBERTI)
OLIVE COMPANY)
For Review of Order No. 88-044 of the)
California Regional Water Quality)
Control Board, Central Valley Region.)
Our File No. A-541.)

ORDER NO. WQ 89-15

BY THE BOARD:

Petitioners, Tri/Valley Growers (Tri/Valley) and Oberti Olive Company (Oberti), filed a timely petition for review of an order issued by the California Regional Water Quality Control Board, Central Valley Region (Regional Board), which applied the State Water Resources Control Board's (State Board's) regulations for waste discharge to land (Subchapter 15) to their discharge. Subchapter 15, commencing with Section 2510 of Chapter 3, Title 23 of the California Code of Regulations, pertains to the water quality aspects of waste discharge to land, establishing waste and site classification and waste management requirements. Petitioners contend they are exempt from Subchapter 15. Rejecting their arguments, the Regional Board adopted waste discharge requirements which prescribed Subchapter 15 requirements and denied petitioners' request for an exemption.

I. BACKGROUND

Oberti, a division of Tri/Valley, owns and operates about 164 acres of wastewater evaporation ponds in the vicinity

of their Madera olive processing plant. There are four impoundments located on a 45-acre site directly east of the processing facility. A second area of 119 acres contains five impoundments and is located over a mile southwest of the facility. The impoundments are lined with single polyethylene liners of 10 or 20 mil thickness, depending on when the impoundment was constructed. A pipe system delivers olive processing brine and associated wastewater to the impoundments. While not hazardous, the effluent is of very poor quality relative to the ground water in the area. The electrical conductivity (EC) of the wastewater ranges from about 10,000 to 100,000¹ umhos/cm while the ground water varies from 200-500 umhos/cm. Because of their potential to cause ground water degradation, the Regional Board determined that the brines are a "designated waste" under Subchapter 15. (23 C.C.R. Section 2522).

Subchapter 15 requires that synthetic liners for surface impoundments containing designated wastes have a minimum thickness of 40 mills. (23 C.C.R. Section 2542(c).) Additional Subchapter 15 requirements for surface impoundments using synthetic liners to contain designated wastes include a second clay liner and a leachate collection and removal system. (23 C.C.R. Sections 2542(b), 2543(a).) The facility does not meet any of these requirements.

The facility had been issued a permit in 1978 under the National Pollutant Discharge Elimination System (NPDES) because

¹ This corresponds to approximately 6,000 to 60,000 mg/l total dissolved solids.

part of its discharge was to surface waters. In March 1982, an incomplete application for renewal of that permit was filed with the Regional Board. A second submittal in November 1982 was also incomplete. The missing information was supplied in January 1983. A year later, the petitioners were informed by the Regional Board that a public hearing would be held on the adoption of the requirements and that Subchapter 15 would affect the existing ponds as well as any proposed additions. In November 1984, the revisions to Subchapter 15 became effective. At about the same time, petitioners informed the Regional Board that the NPDES discharge would be eliminated. On March 7, 1985, petitioners were asked to submit a ground water monitoring program proposal which complied with Subchapter 15. That same month, petitioners went to court and obtained an injunction against the Regional Board proceeding with the imposition of the waste discharge requirements. That order was finally removed by the court February 26, 1988. On March 28, 1988, the Regional Board issued its order after a properly noticed public hearing.

II. CONTENTION AND FINDING²

1. Contention: Petitioners contend that they cannot be subjected to the retrofitting requirements of Subchapter 15 until they have completed an approved monitoring plan pursuant to Section 2510(e).

² The numerous contentions raised by petitioners have been condensed. Other contentions not discussed are denied for failure to raise substantial issues. 23 C.C.R. Section 2052(a)(1); People v. Barry, 194 Cal.App.3d 158, 239 Cal.Rptr. 349 (1987).

Finding: We find that the special circumstances surrounding this case justify allowing petitioners to perform monitoring pursuant to Subchapter 15, submit the results to the Regional Board, and have those results considered pursuant to Section 2510(e).

Discussion: Section 2510(d) provides that a discharger who uses an existing site shall, within six months of the effective date of Subchapter 15, develop "monitoring programs which comply with the requirements of Article 5 of this subchapter". The six-month period ended in mid-1985 and the record reflects that no proper program was submitted by petitioners during that time. However, petitioners did submit a proposal which was rejected as inadequate by the Executive Officer for the Regional Board. The matter ended up in court for the better part of three years. As was noted above, about a month after the court's injunction was lifted, the Regional Board hearing, which is the subject of this petition, took place.

Nowhere in the process was there ever the kind of non-adversarial negotiation which usually results in the design and approval of a proper monitoring program. We do not hold the Regional Board responsible for the failure to arrive at an acceptable monitoring program. The court's injunction cut short any chance of working out the perceived difference. Irrespective of why this all happened, it is clear that the system did not work as it should have and that no proper monitoring was done pursuant to an approved program.

Even at this late date, we feel that some sort of monitoring program would be beneficial and would further the purposes of Subchapter 15. Therefore, we will set aside the Regional Board's order, extend the normal time for monitoring pursuant to Section 2510(d), and remand this matter for consideration of a monitoring plan and its results.

The proposed monitoring program need only supplement what has already been done. As a practical matter, much is now known about the ground water situation in the area of the impoundments. Because of certain outside influences (like a nearby winery and irrigation ditch) and because of competing influences within the area (like pumps and wells performing different functions), it is not clear what sources contribute to what problem. Therefore, the petitioners must present a plan for monitoring which clearly and uniquely identifies the contributions of the sources under petitioners' control to the existing underground pollution. Furthermore, it is essential that it be determined whether the ponds leak. The proposal must identify the method of investigating that issue.

Petitioners should present the plan for monitoring to the Regional Board through its Executive Officer no later than October 2, 1989. A status report on the monitoring should be submitted to the Regional Board within 60 days of Regional Board approval of the plan. A final report should be made within 120 days of approval. The results of the program can then be considered by the Regional Board when it considers what revisions, if any, should be made in the waste discharge

requirements. If significant problems prevent timely compliance, the Regional Board may extend any deadline.

III. CONCLUSION

Considering the unique facts which apply in this case and how useful more complete and accurate information may prove to be in future decisions about this site, we will extend the time ordinarily allowed for monitoring under Section 2510(d). We will permit petitioners to do now what ought to have been done in 1985 and to submit the results of the monitoring to the Regional Board for its consideration pursuant to Section 2510(e). The monitoring proposal, which must include a plan for clearly and uniquely identifying each contributing source of pollution and must contain a reliable method of determining whether the liners contain leaks, must be presented to the Regional Board by October 2, 1989. An interim and final reports must be filed within 60 and 120 days, respectively, of Regional Board approval of the plan.

IV. ORDER

The Regional Board order is set aside and the matter is remanded to the Regional Board. Petitioners must propose and implement a monitoring program consistent with this order. The Regional Board shall review the proposed monitoring program and the results of the program pursuant to Section 2510(e) of Subchapter 15.

CERTIFICATION

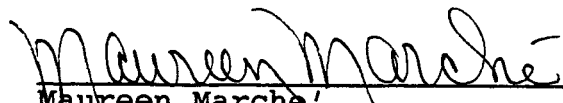
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on September 6, 1989.

AYE: W. Don Maughan
 Darlene E. Ruiz
 Eliseo M. Samaniego
 Danny Walsh

NO: None

ABSENT: Edwin H. Finster

ABSTAIN: None



Maureen Marche
Administrative Assistant to the Board