

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition)
of Simpson Lee Paper Company)
For Review of Order No. 76-229,)
California Regional Water Quality)
Control Board, Central Valley)
Region. File No. A-160.)

Order No. WQ 78-16

BY THE BOARD:

The Simpson Lee Paper Company (Petitioner) operates a Kraft pulp and paper mill located near Anderson California in Shasta County. The mill is subject to Order No. 74-468 (NPDES Permit No. CA0004065) prescribing waste discharge requirements for the treatment and discharge of waste. Order No. 74-468 provides that the treatment of waste shall not create a nuisance as defined in the California Water Code.

On October 22, 1976, the California Regional Water Quality Control Board, Central Valley Region (Regional Board) adopted Order No. 76-229 (Order) directing the petitioner to cease and desist from treating and discharging waste in violation of the nuisance provision and on November 22, 1976, the petitioner filed a petition for review of the Regional Board's action adopting this Order. In general, the petitioner contends that the Regional Board is without jurisdictional authority to adopt the Order.

I. BACKGROUND

The following quotation from the report of the hearing panel of the Regional Board indicates the factual background of this petition:

"The staff report made by Mike Stevenson indicated that he had personally investigated odor complaints by persons residing near the Simpson Lee Paper Company on five occasions between 11 August 1976 and 11 October 1976. Mr. Stevenson stated that there were strong odors emanating from the Company's treatment ponds which could be observed beyond the perimeter of the Company's property and near homes in the vicinity.

Mr. Dale Watson, Deputy Air Pollution Control Officer, Shasta County Air Pollution Control District, presented testimony that County inspectors had made measurements on numerous occasions beyond the Company's property, showing odor levels ten times greater than the threshold detection level.

Testimony was received from seven persons residing in and about the immediate vicinity of the Company's waste treatment ponds. The testimony generally indicated that odor problems were experienced both before and during the spring of 1976, that the odor problems had become particularly acute and offensive during the summer months of 1976 and continue to be offensive to date. Numerous examples were given by the persons testifying indicating that the odors were extremely offensive and limited the use of their property and homes.

Testimony by the Company was provided by Mr. Quintin A. Narum and Mr. Kenneth Perkins. While generally admitting that there are abnormal odors associated with the operations of the treatment ponds, the Company did not make any observations as to the effect of those odors on surrounding residents. The Company did detail considerable efforts it had already initiated in seeking to identify the source of the abnormal odors. Although strongly emphasizing its intent to make every effort to identify and correct the odor problem, the Company was unable to specify any particular date by which it believes the problem could be finally corrected.

On the basis of the testimony received by our Hearing Panel, we have concluded that an odor problem does exist which constitutes a nuisance within the meaning of Section 13050(m) and which violates Provision No. F.2. of Order No. 74-468. We accordingly recommend that the Regional Board adopt the proposed Order made a part of this report."

After receiving this Panel report, the Regional Board adopted the cease and desist order under review here. The evidentiary findings made by the Regional Board in support of the order are not challenged by the petitioner.

II. CONTENTIONS AND FINDINGS

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

1. Contention: The petitioner contends that the Federal Water Pollution Control Act (CWA)^{1/} does not authorize control over activities unrelated to the actual discharge of waste into waters of the United States or which do not impact upon water quality.

Findings: Whether or not the Federal Act provides for control of nuisance odors not directly related to the discharge of waste, such nuisances can be regulated under state law.^{2/} The CWA does not preclude a state from including provisions in its permits addressing matters beyond the scope of the permit required by the CWA.^{3/} It is clear that the CWA imposes minimum limitations and that states may impose additional limitations or conditions as permitted or required by state law.

2. Contention: The Regional Board has no jurisdiction under the California Water Code over nuisances associated with the treatment of waste as opposed to nuisances associated with the discharge of waste.

-
1. 33 USC 1251, et seq., P.L. 92-500, Section 101, et seq. The Federal Water Pollution Control Act has been amended since this petition was filed by the Clean Water Act of 1977 and the Act, as amended, is hereinafter referred to as the Clean Water Act (CWA).
 2. Section 13000, et seq., Chapter 1, Division 7, California Water Code.
 3. 33 USC 1370; Section 510, P.L. 92-500.

Findings: We disagree. ^{Control} The legislative history of the Porter-Cologne Water Quality Act (Act), and a literal reading of the Act makes clear the legislatures' intent that the California Regional Water Quality Control Boards (Regional Boards) have jurisdiction over nuisances associated with the treatment of waste.

The language of the Dickey Act, the predecessor of the Porter-Cologne Act, precluded the Regional Boards from responding to nuisance odor complaints originating from waste treatment processes as opposed to the disposal of waste. In March 1969, a study panel authorized by the State Board submitted an extensive report including comprehensive recommended changes in the Water Code respecting the control of water pollution to the legislature. The following proposed changes in the provisions of the Water Code and notes regarding these changes were included in that report:

"(m) "Nuisance means anything which (1) is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property and (2) affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal, and (3) occurs during, or as a result of, the treatment or disposal of wastes."

"(Note. The present definition of nuisance is considered to be practically unenforceable because of its requirements of proof of the vague terms "damages" and "unreasonable practices", as well as its non-applicability to treatment plants, with respect to which most nuisance complaints are directed. (emphasis added)4/

4. Appendix A, Recommended Changes to the Water Code, Recommended Changes in Water Quality Control, Final Report of the Study Panel of the California State Water Resources Control Board, March 1969, p. 30

* * *

"13263. (a) The Regional Board, after any necessary hearing, shall prescribe requirements as to the nature of any proposed discharge, existing discharge, or material change therein, except discharges into a community sewer system, with relation to the conditions existing from time to time in the disposal area or receiving waters upon or into which the discharge is made or proposed. The requirements shall implement relevant water quality control plans, if any have been adopted, and shall take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of section 13241." (emphasis added)^{5/}

The foregoing proposed changes to the Water Code were adopted without change by the 1969 California Legislature.^{6/} Further, the May 5, 1969, Assembly Journal reflects that on May 1, 1969, the Assembly unanimously consented (with certain exceptions not of interest herein) to have the notes accompanying the foregoing provisions reflect the intent of the Assembly Committee on Water in approving the various provisions of Assembly Bill No. 413 which became the Porter-Cologne Act. A similar action on July 2, 1969, indicated that the notes reflected the intent of the Senate Committee on Water Resources. Clearly, as reflected by the clarifying note set forth above, the legislature intended the State Board and the Regional Boards to have and exercise jurisdiction over odor nuisance problems associated with the treatment as well as the disposal of wastes when it enacted the 1969 amendments to the Water Code.

5. See p. 58 of source material identified under preceding footnote.

6. See footnote 2, supra.

III. CONCLUSIONS

After review of this matter and for the reasons heretofore expressed we conclude that the Regional Board has jurisdiction over nuisance odors from waste treatment plants.

IV. ORDER

IT IS HEREBY ORDERED that the action of the California Regional Water Quality Control Board, Central Valley Region, in adopting Cease and Desist Order No. 76-229 was appropriate and proper and this petition is hereby denied.

Dated: 9-25-78

/s/ John E. Bryson
John E. Bryson, Chairman

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

Absent
W. W. Adams, Member

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

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