

MJS

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition )  
of H. D. Gross dba Valley Rock )  
and Sand Company for Review of )  
Action by the California Regional )  
Water Quality Control Board, Santa )  
Ana Region, on March 10, 1978. )  
Our File No. A-198. )

Order No. WQ 78-11

BY THE BOARD:

On March 10, 1978, the California Regional Water Quality Control Board, Santa Ana Region (Regional Board), held a public hearing to determine whether H. D. Gross dba Valley Rock and Sand Company (Petitioner) should be referred to the Attorney General for appropriate legal action for failure to file a report of waste discharge. At the conclusion of the hearing, the Regional Board found that the Petitioner had failed to comply with Section 13260 of the California Water Code and directed the Executive Officer to refer the matter to the Attorney General for appropriate legal action including a petition to the Superior Court for issuance of a temporary restraining order, temporary injunction, or permanent injunction or any combination thereof requiring the Petitioner to comply with Section 13260 of the California Water Code. On March 15, 1978, the Petitioner filed its petition for review of the Regional Board's action and requesting a stay of the Regional Boards order.

I. BACKGROUND

The Petitioner owns and operates a sand and gravel mining and washing facility located in the San Jacinto Watershed,

about 10 miles northwest of the City of San Jacinto in Riverside County. Approximately 220,000 gallons of water per day are used to wash the sand and gravel and the waste wash water is then discharged to unlined disposal/recycling ponds. Recycled water makes up about 50 percent of the wash water supply. The remainder is derived from local groundwaters. Lost water percolates to underlying groundwater. The water contains silt, sand and may also contain dissolved minerals which may be concentrated before returning to the underlying groundwater.

On December 8, 1975, subsequent to a Regional Board staff investigation of the discharge operations, the Petitioner was requested to file a report of waste discharge. On December 11, 1975, the Petitioner contacted the Regional Board staff and informed them that he was going to refuse to file a report or pay a filing fee. Thereafter, the staff engaged in protracted correspondence and negotiations with the petitioner informing him of his legal obligations, to which the Petitioner responded that his was not a waste discharge operation and that it was not subject to the jurisdiction of the Regional Board. After numerous additional discussions, on March 11, 1976, the Petitioner filed an incomplete report of waste discharge, omitting the filing fee and on March 30, 1976, again refused to pay the filing fee. The Executive Officer referred the matter to the Riverside County District Attorney for violation of Water Code Section 13260.

On November 30, 1976, a jury trial was held with the Petitioner being found guilty and assessed a fine of \$315.00. Execution of judgment was stayed pending appeal. Appeals were rejected by the Riverside County Superior Court, California District Court of Appeals, the State Supreme Court and the U. S. Supreme Court. After judgment was final, the Petitioner paid the fine on October 28, 1977.

On February 8, 1978, the Petitioner was again requested to submit a complete report of waste discharge and his attorney requested a hearing before the Regional Board for the announced purpose of appealing a decision to the State Board.

The Regional Board convened the hearing on March 10, 1978, to consider referral to the Attorney General. The Petitioners' contentions before the Regional Board were that its operations did not constitute a waste discharge, the operations do not affect the quality of the waters of the state, and that the Regional Board has no jurisdiction. After hearing the evidence presented by the staff, the Regional Board ordered the matter referred to the Attorney General.

## II. CONTENTIONS AND FINDINGS

The Petitioner contends that the Regional Board's action was inappropriate in that its business recycles water and does not "waste" water within the meaning of Section 13260. Water Code and that, therefore, its business operations could not affect the quality of the waters of the State. The Petitioner further contends that it is being required to file reports and pay filing fees to an agency (the Regional Board) which does not have jurisdiction, and asks that the State

Board find Section 13260 Water Code unconstitutional.

The evidence before the Regional Board clearly demonstrated the nature of the Petitioner's business operation and the existing or potential effect upon the quality of the waters of the State by Petitioner's discharge of wastewater. The record further establishes that the Petitioner has wilfully failed or refused to comply with the provisions of Section 13260 Water Code which requires that it file a complete report of waste discharge including the payment of filing fees. The action of the Regional Board was both appropriate and proper.

III. CONCLUSIONS

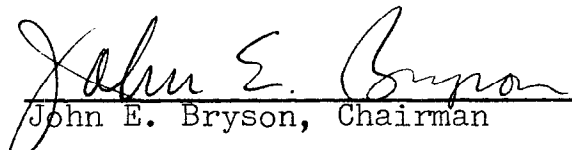
Having reviewed the records of the Regional Board and considered the actions taken by the respective courts of jurisdiction in this matter, we conclude that the petition is without merit and that it fails to raise any substantial issue of law or fact.


IV. ORDER


IT IS HEREBY ORDERED THAT:

1. The petition be, and is hereby, dismissed.
2. The request for a stay is denied.

Dated: May 18, 1978

  
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John E. Bryson, Chairman

  
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W. Don Maughan, Vice Chairman

  
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W. W. Adams, Member