

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

ORDER WQ 2001 - 01

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In the Matter of the Petition of  
**THE COUNTY OF SAN DIEGO, SAN MARCOS LANDFILL**

For Review of Assessment of Administrative Civil Liability,

Order No. 2000-82

Issued by the

California Regional Water Quality Control Board,  
San Diego Region

*SWRCB File No. A-1302*

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BY THE BOARD:

The San Diego Regional Water Quality Control Board (Regional Water Board) issued to the County of San Diego (County) an order assessing administrative civil liability in the amount of \$305,050 for its failure to comply with certain requirements concerning the closed San Marcos Landfill. The decision to impose the assessment, made on May 10, 2000, found that the County had failed to comply with the terms of a cease and desist order issued by the Regional Water Board in 1998 (Order No. 98-39) and waste discharge requirements issued in 1992 (Order No. 92-02) that were modified by the State Water Board in its Order WQ 93-08. The basis of the order is the violation of the terms of Water Code section 13350.<sup>1</sup>

The violations concerned three issues: (1) the failure of the County to provide an adequate top cover for the landfill; (2) the failure to file a quarterly report for the period covering

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<sup>1</sup> While it is clear from the record that the parties were all aware that the action was taken pursuant to Water Code section 13350, the complaint and order make no mention of that or any other section justifying the imposition of administrative civil liability. Water Code section 13323(a) requires that the complaint allege the provision of law authorizing civil liability. The County did not raise this issue in its petition. We regard this as harmless error but urge the Regional Water Board to correct this problem in the future.

October through December 1998; and (3) the failure to report a sheer crack in the north slope of the landfill. The Regional Water Board assessed \$300 per day for the first violation which they found extended for 671 days. This assessment totaled \$201,300. The Regional Water Board assessed \$250 per day for the second violation over a period of 407 days. This assessment came to \$101,750. The third assessment was for the violation of two reporting requirements for one day each at \$1,000 per day.

The County filed a timely petition seeking review of the administrative civil liability assessment.

### I. BACKGROUND

The County operated the class III San Marcos Landfill until March 1997 at which point the County ceased the discharge of additional waste to the site. However, to date the County has not initiated final closure. In addition to the waste discharge requirements mentioned above, the Regional Water Board issued an administrative civil liability order to the County on account of the landfill operation in 1994 (Order No. 94-77) in the amount of \$105,000. (The Superior Court overturned the order in 1997 on procedural grounds.) After the County ceased operations at the site, Regional Water Board inspections found a number of ongoing problems involving the cover, erosion, and general maintenance. The cease and desist order mentioned above was issued by the Regional Water Board in May 1998. It required compliance with the terms of the waste discharge requirements and established a timetable for both immediate and longer-term measures. Among the requirements of the order were:

“3c. Landfill cover on the top deck of the San Marcos Landfill shall be constructed to minimize percolation of precipitation through the wastes. The landfill cover shall be not less than 24” thick and achieve a permeability of

$3 \times 10^{-5}$  cm/sec. The structural integrity and effectiveness of the landfill cover and all containment structures shall be maintained as necessary to correct the effects of settlement and other adverse factors. . . .

“3f. Submit **quarterly progress reports** identifying and discussing all tasks undertaken by the County to achieve compliance with the directives of this Order. The reports shall identify completion dates for each task and shall be submitted according to the following schedule: [quarters are defined and the report is due 30 days thereafter].”

The County was already required by the waste discharge requirements to report “any non-compliance which may endanger health or the environment” (E 7) and to immediately notify the Executive Officer “of any flooding, equipment failure, slope failure, or any other change in site conditions which could impair the integrity of the leachate containment facilities or of precipitation and drainage control structures.” (E.11)

## II. CONTENTIONS AND FINDINGS

Contention: The County contends that the cover was generally maintained according to the requirements of the order and that the number of days of violation was far less than the 671 days found by the Regional Water Board.

Finding: There is merit to this contention. It is absolutely clear from the record that the County did not properly maintain the cover on the landfill. Over and over again the Local Enforcement Agency (LEA) found that the intermediate cover was inadequate and that trash was visible through the cover or worse. While not every month resulted in an adverse finding from the LEA, the majority of such reports indicated a failure to abide by the requirement to provide adequate cover. On occasions when the Regional Water Board inspected the site, violations were generally found. However, the Regional Water Board’s finding that at no time

did the County comply with the cover requirements from May 13, 1998 to March 13, 2000 is not supported by the record.

The record contains ample evidence of violations but also some indications of compliance. For example, in its July 8, 1998 Inspection Report, the LEA notes as follows:

“Area of concern: intermediate cover: Additional cover has been applied to some areas of the fill correcting the violation noted earlier.”

In its Notice of Violation dated April 21, 1999, the Regional Water Board notes “improvements to the sideslopes, top deck and drainage channel” and makes no mention of lack of inadequate cover. Still other reports, such as the LEA report on September 1, 1998 indicate a concern with the intermediate cover but specifically state that there are “no violations noted.”

It is not feasible for the State Water Board to go through the record and reconstruct the number of days that actually involved violations of the cease and desist order. The County readily admits a period of 51 consecutive days of violation in late 1999. Plainly there are many others.<sup>2</sup> Just as plainly there are a number of months in which it appears from the record that the inspectors gave the County credit for being in compliance. The Regional Water Board must reconsider this matter to more accurately determine the periods of noncompliance or, if it believes that there were no periods of compliance, to provide better evidence to that effect. The amount of the assessment, \$300 per day, is certainly within the sound judgment of the Regional Water Board to determine.

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<sup>2</sup> It is reasonable to infer that a violation noted in two consecutive reports from the LEA was a continuing violation throughout that period.

Contention: With regards to its failure to turn in the quarterly report, the County contends that it should not be assessed a penalty for the time after it submitted what it believed was an adequate report.

Finding: The County did not turn in a proper quarterly report for the October through December 1998 period. The substitute report, composed of other smaller reports submitted to another agency, plainly was not adequate to satisfy the requirements of the cease and desist order.<sup>3</sup> However, it is unreasonable to continue to assess liability to the County for failing to provide a quarterly progress report long after it has submitted apparently adequate progress reports for the following quarters. Progress reports inevitably build on previous reports. To require that the County now provide a report of its progress in the final quarter of 1998 makes no sense. Likewise, it makes no sense to continue to fine them for that violation of the cease and desist order. The report ought to have been turned in before the report for the first quarter of 1999. It was not. The date on which the following report was provided to the Regional Water Board should terminate the sanctions for failing to turn in the earlier one. The amount of \$250 per day for the violation is within the sound discretion of the Regional Water Board to determine. Assuming the next report was provided on time, the duration of the violation would have been roughly 90 days and the assessment should be about \$22,500.

Contention: The County contends that the sheer cracks were not of sufficient magnitude to trigger the reporting requirement in the waste discharge requirements.

Finding: The State Water Board will not second-guess the Regional Water Board with regard to this issue. While there may be some technical argument that the sheer crack was

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<sup>3</sup> The fact that the Regional Water Board waited some time before notifying the County that the substitute was inadequate is of concern but, in light of our conclusion, is irrelevant.

not as severe as it might appear, the crack was about 350 feet in length. Since the only requirement was to report the crack, it is unreasonable for the County to fail to do so and then argue, in retrospect, that it was not a big problem. The Regional Water Board chose to assess liability for only one day for the failure to make a report. Under the circumstances, that is entirely reasonable.

### III. CONCLUSION

It is generally the case that the State Water Board will not review the decision of a Regional Water Board with regard to the issuance of an order assessing administrative civil liability. However, when it appears that the decision involves some abuse of discretion, the State Water Board will not forego such review. This petition raises such issues.

The Regional Water Board properly found that the County violated its waste discharge requirements in failing to report a long sheer crack in the landfill slope and that it violated the cease and desist order in both failing to file a quarterly report and in failing to maintain a proper cover on the site. However, the Regional Water Board has not provided adequate justification for the calculation of the number of days applicable to the last two violations. In the case of the failure to file the report, the number of days of violation should have been cut short when the next quarterly report was filed. In the case of the landfill cover, more specific findings are needed to justify what appears to be an excessive assessment.

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IV. ORDER

IT IS HEREBY ORDERED THAT the matter is remanded to the Regional Water Board for further findings and modifications consistent with this order.

CERTIFICATION

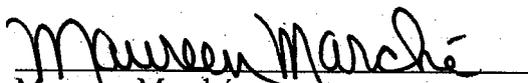
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on February 15, 2001.

AYE: Arthur G. Baggett, Jr.  
Mary Jane Forster  
John W. Brown  
Peter S. Silva

NO: None

ABSENT: None

ABSTAIN: None

  
Maureen Marché  
Administrative Assistant to the Board