

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Request by
VASCO BRAZIL for a Stay of
Orders Nos. 82-17 and 82-18 of the
California Regional Water Quality
Control Board, San Francisco Region.
Our File No. A-310.

Order No. WQ 82-7

BY THE BOARD:

On March 17, 1982, the California Regional Water Quality Control Board, San Francisco Region (Regional Board) adopted Orders Nos. 82-17 and 82-18. Order No. 82-17 amended Order No. 79-169, which prescribed waste discharge requirements for the City of Petaluma's Water Pollution Control Plant. Order No. 82-18 established water reclamation requirements for the City of Petaluma (City) and six reclaimed wastewater users.^{1/} On April 15, 1982, the State Board received a petition for review of Orders Nos. 82-17 and 82-18 by Vasco Brazil. Pending completion of State Board review of the issues, petitioner requested a stay of the Regional Board orders. On June 17, 1982, the State Board held a hearing to consider testimony regarding petitioner's stay request.

1. The users are Dan Silacci, Charles Matteri, Henri Cardinaux, Joseph Mendoza, Ralph Bettinelli and Milton Tunzi.

I. BACKGROUND

On December 18, 1979, the Regional Board adopted Order No. 79-169, prescribing requirements for the discharge of wastewater from the City's plant to the Petaluma River. Order No. 79-169 contained a prohibition against the discharge of wastewater to the Petaluma River from May 1 through November 30 of each year and included a time schedule to achieve compliance with the prohibition. The time schedule was consistent with a proposal by the City to construct, with the aid of Federal and State Clean Water Grant funds, a wastewater reclamation project utilizing agricultural irrigation as the means for complying with the discharge prohibition.^{2/}

In Order No. 82-17, the Regional Board shortened the prohibition period to the interval from May 1 through October 20 of each year and revised the time schedule for compliance with the prohibition. The revised schedule calls for award of the construction contract for the City's treatment plant improvements by June 1, 1982, and completion of construction by December 1, 1983.

The City's reclamation project will entail the irrigation with reclaimed wastewater of a minimum of 550 acres of land. The land will be used to grow fodder, fiber, or seed crops. Requirements regulating the use of reclaimed wastewater for irrigation are contained in Regional Board Order No. 82-18.

2. The City accepted Federal and State Clean Water Grants in January 1982, for the construction of the reclamation project.

II. CONTENTIONS AND FINDINGS

Petitioner requests a stay of Order No. 82-17 to prevent further construction and implementation of the City's reclamation project.^{3/} Petitioner also seeks a stay of Order No. 82-18 in order to prevent the use of reclaimed wastewater for irrigation by landowner Dan Silacci. In the alternative, petitioner requests that, if Silacci is allowed to continue the use of reclaimed wastewater, that the requirements of Order No. 77-31^{4/} instead of Order No. 82-18 be enforced against Silacci.

3. Section 2053 of the State Board's petition regulations provides as follows, with respect to stay orders:

"(a) 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) a 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. If a hearing is held, notice shall be given in such manner and to such persons, in addition to the petitioner, as the board deems appropriate.

(b) Nothing in subsection (a) shall preclude the state board from issuing a stay of the effect of an action of a regional board, after hearing, upon its own motion. The requirement of an affidavit may be waived by the board in case of an emergency."

4. Order No. 77-31 was the predecessor of Order No. 82-18. Order No. 77-31 established wastewater reclamation requirements for the City of Petaluma and five users, including Dan Silacci. Order No. 77-31 was rescinded by Order No. 82-18.

In addition, petitioner seeks a stay order directing the City of Petaluma to proceed with a study of a small self-contained wetlands project.

In support of the stay request, petitioner has filed an affidavit in which he alleges that substantial harm will result to him and to the public interest if a stay is not granted. Generally, he alleges that the City's agricultural irrigation project will degrade the quality of his groundwater, which is used for domestic purposes, and his surface water, which is used for livestock and fishing. He further alleges that approximately 100 acres of land within the 550 acres of land to be irrigated are included in the watershed to his property. In addition, he contends that aerosols from the wastewater spraying will invade his property and cause injury to himself and his family and that members of the public will also come in contact with aerosols when traveling on the public roads. Petitioner further alleges that there will be a lack of substantial harm to other interested parties and to the public interest if the stay is granted, and that there are substantial questions of law and fact regarding this matter.^{5/}

While we believe that petitioner's appeal has raised issues which merit our attention, we conclude that a stay is not appropriate in this case for the following reasons. The first element which petitioner must prove in order to obtain a stay is that he or the public interest will suffer substantial harm if a

5. See Section 2053(a)(2) and (3), footnote 5 supra.

stay is not granted. With respect to Order No. 82-17, we have carefully reviewed both the petition and affidavit filed by petitioner and find no allegations of fact nor proof that substantial harm will result to petitioner or the public interest if the time schedule contained in Order No. 82-17 is not stayed. We note that the project is not scheduled for completion until December of 1983. This Board contemplates acting on the petition on the merits at our July meeting. We are unable to find that substantial harm will result to petitioner or the public interest prior to action by this Board on the merits of the petition.

With respect to Order No. 82-18, we note that the Regional Board Executive Officer has advised Mr. Dan Silacci that the City of Petaluma's reclaimed wastewater facilities are scheduled to become operational in the 1984 dry weather irrigation season and that, during the interim period prior to completion of the project, Mr. Silacci is authorized to continue the use of reclaimed wastewater "subject to all reclaimed wastewater use specifications, prohibitions, provisions, and self-monitoring program requirements contained in Regional Board Order 77-31...."^{6/} Without commenting on the propriety of the Regional Board's action, we note that the application of Order No. 77-31 to the Silacci parcel, rather than Order No. 82-18, is the relief which petitioner seeks. We, therefore, will not issue a stay of

6. Letter dated May 14, 1982, from Fred H. Dierker, Regional Board Executive Officer, to Mr. Dan Silacci.

Order No. 82-18. We will, however, direct the Regional Board to provide immediate notification to this Board should the Regional Board decide to apply Order No. 82-18 to the Silacci parcel, prior to final action by the State Board on the merits of the petition. If the Regional Board does decide to apply Order No. 82-18 during this interim period, the State Board will immediately schedule a hearing on petitioner's request for a stay of Order No. 82-18.

Having concluded that a stay of Order No. 82-18 is unnecessary, we will examine petitioner's request for a stay of Order No. 82-17 in light of the second element which is necessary for a stay. The second element which petitioner must prove is "a lack of substantial harm to other interested persons and to the public interest if a stay is granted."^{7/} Petitioner has alleged no facts either in this petition or affidavit to support his bare allegation that there will be a lack of significant harm to other interested persons and to the public interest if a stay of the time schedule in Order No. 82-17 is granted.

III. CONCLUSION

For the reasons stated above, we conclude that a stay of Regional Board Orders Nos. 82-17 and 82-18 is not appropriate.

7. See Section 2053(a)(2), footnote 3 supra.

IV. ORDER

IT IS HEREBY ORDERED that petitioner's request for a stay is denied.

IT IS FURTHER ORDERED that the Regional Board provide immediate notification to the State Board if the Regional Board determines to enforce Order No. 82-18 against Dan Silacci.

DATED: June 17, 1982

/s/ Carla M. Bard
Carla M. Bard, Chairwoman

/s/ L. L. Mitchell
L. L. Mitchell, Vice-Chairman

/s/ Jill B. Dunlap
Jill B. Dunlap, Member

/s/ F. K. Aljibury
F. K. Aljibury, Member

