

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of)
INTERNATIONAL BUSINESS MACHINES)
For Review of Site Cleanup)
Requirements, Order No. 88-157,)
of the California Regional Water)
Quality Control Board, San)
Francisco Region. Our File)
No. A-588.)
_____)

ORDER NO. WQ 88-15

BY THE BOARD:

On October 19, 1988, the California Regional Water Quality Control Board, San Francisco Region (Regional Board), adopted Order No. 88-157, Site Cleanup Requirements and Order No. 88-158, Waste Discharge Requirements, for International Business Machines (hereinafter IBM). On November 18, 1988, IBM filed a petition for review of the above orders. Included in the petition was a request for stay of certain provisions of Order No. 88-157. Our order today deals only with the request for a stay. For the reasons discussed herein, the stay will be granted.

I. BACKGROUND

IBM operates its General Products Division in the City of San Jose, Santa Clara County. In 1980 and 1981 IBM identified

several industrial chemicals in soil and groundwater adjacent to an underground tank farm on its property. Additional investigation revealed more extensive groundwater pollution. A plume has been defined extending through the Santa Teresa groundwater basin approximately 2-1/2 miles from the IBM site northwest toward a natural hydrogeologic bottleneck known as the Edenvale Gap. The Regional Board adopted cleanup requirements for this discharge in December 1984. These requirements were appealed to the State Board, and we issued Order 86-8.

We further reviewed the groundwater extraction program and its effect on basin supplies in February 1988. State Board Resolution 88-88 was issued in July 1988 directing IBM to fully address the groundwater pumping issue and prepare a groundwater use plan. The Regional Board amended the site cleanup requirements (order) for IBM in October 1988, incorporating the requirements of Resolution 88-88. Among other provisions the Regional Board required a continuously pumping monitoring well at the Edenvale Gap, the subject of this stay request.

Finding 23 of the Regional Board order states that:

"In order to assure effective verification monitoring the groundwater leaving the defined area through the Edenvale Gap, a continuously pumping well needs to be monitored. This well must be screened in at least the B and C aquifers. The well must be located, and pumped at sufficient volume, to assure a capture zone representative of the groundwater passing through the Edenvale Gap."

Provision C2.a (Task 1) of the Regional Board order requires IBM to have a continuous pumping well to monitor groundwater passing through the Edenvale Gap, and provide a technical report describing such a well to the Regional Board by December 15, 1988. Specifically, the provision states (in pertinent part):

Task 1-Edenvale Gap MONITORING

"Submit a technical report acceptable to the Executive Officer demonstrating effective monitoring of groundwater passing through the Edenvale Gap. This report shall at a minimum specify for an existing or proposed well, the well's location, screened interval, pumping rate, anticipated capture zone and proposed monitoring schedule. If a new well is proposed, an installation and monitoring schedule shall be included...."

IBM asked for clarification of this requirement subsequent to the adoption of the Regional Board Order. The Regional Board Executive Officer replied in a November 4, 1988 letter that it is clearly the intent of the Regional Board that "the Gap be monitored by a continuously pumping well. A report which did not include this would not be acceptable".

Provision C2.b, (Task 2) requires IBM to submit to the Regional Board a groundwater use plan by December 15, 1988. The last sentence provides:

"The technical report shall demonstrate how groundwater extracted from the Edenvale Gap will be reused,

including specific uses and time schedules for implementation."

Petitioner requests that the State Board stay the requirements under Task 1 and 2 of the Regional Board Order that relate directly to the Gap well issue.

II. CONTENTIONS AND FINDINGS

Water Code Section 13321 authorizes the State Board, upon notice and a hearing, to stay in whole or in part the effect of a decision and order of a Regional Board. Our regulations authorize a stay under very specific conditions. In pertinent part, 23 California Code of Regulations, Section 2053 provides:

- "(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 if a stay is granted, and
 - (3) substantial questions of fact or law regarding the disputed action."

1. Contention: IBM will suffer substantial harm if it is required to submit a technical report regarding a continuously pumping monitoring well and a groundwater reuse plan for the well, by December 15, 1988.

Finding: The technical merits of a continuously pumped monitoring well at the Edenvale Gap required in Task 1 (Gap well)

are clearly disputed. Testimony received by the Regional Board at the October 19, 1988 hearing regarding the necessity of such a well was mixed. Such a well was not originally envisioned as part of the long term remedial plan. IBM alleges that requiring such a well now will necessitate the re-evaluation of other aspects of the long term plan, including the use of the mid-plume extraction wells. The Gap well would result in the additional extraction of 500,000 gallons per day (gpd) of water. IBM further alleges that there is inadequate justification in the record to support the requirement of such a well.

The petitioner further urges that under the Regional Board order it would have to technically justify such a well and demonstrate its effectiveness. IBM believes it has already demonstrated that such a well could provide no more effective monitoring than the existing 28 well network.

IBM further alleges that it is not reasonably possible to comply with the last sentence of Task 2, i.e., providing a groundwater reuse plan for the additional 500,000 gpd, by December 15, 1988. A new set of possible reuse options and potential reusers would have to be identified. Evaluation of reuse options would require detailed analyses of water quality, cost, and liability, duration of pumping and other factors, involving extensive discussion with many parties. Further, IBM alleges that it would be substantially prejudiced by having to

expend this effort in evaluating reuse options while the State Board is considering the petition which may render the issue moot.

We are concerned about the need for a continuously pumped monitoring well which extracts an additional 500,000 gpd in the Santa Teresa basin. We agree that IBM could be substantially prejudiced by preparing the extensive technical report and groundwater reuse plan adequate to meet the Regional Board's order by December 15, 1988.

2. Contention: There will be a lack of substantial harm to other interested persons and the public interest if a stay is granted.

Finding: In support of this contention, IBM states that its remediation program would continue under the other provisions of the Regional Board orders. If the State Board were to ultimately uphold the disputed tasks, IBM could then prepare and submit the Task 1 technical report and supplement the Task 2 report to include discussion of the reuse options for the water extracted by the Gap well. Further, IBM argues that a stay would not result in any prejudice to the overall schedule for the remedial plan implementation.

We note that Task 1 relates to the submission of a technical report regarding a monitoring well. While such a well may ultimately be found necessary, there is no immediate impact on water quality if a technical report is not submitted to the Regional Board by December 15, 1988. The cleanup effort has been underway for several years, and a possible delay of several months in the submittal of a technical report which is part of an overall cleanup plan will not harm the public interest.

Testimony at the Regional Board hearing indicated that while both the San Jose water Company and the Santa Clara Valley Water District support to some degree the Regional Board requirement for a Gap well, neither party was relying on such a well being installed in the immediate future.

Likewise, there appears to be no immediate impact on water quality if the relevant part of groundwater reuse plan is delayed pending our review of the petition. Such a component will not be necessary at all if the Gap well is found not to be needed. If we do ultimately uphold the Regional Board's requirement of the Gap well, IBM will be responsible for the accompanying groundwater reuse plan for the additional 500,000 gpd. This component must be compatible with the groundwater reuse plan to be submitted to us pursuant to Resolution 88-88.

3. Contention: There are substantial questions of fact or law regarding the dispute action.

Finding: As discussed above, there are substantial technical questions of fact as to whether the Gap well as required by the Regional Board is needed at all. We will be addressing these in greater detail as part of our review of the petition as a whole. After review of the record, we will also be able to determine whether the requirement is based upon substantial evidence, as is legally required.

III. CONCLUSION

A stay of Task 1 and the last sentence of Task 2 is appropriate. We find that the petitioner could be substantially harmed by preparing an extensive technical report and reuse plan for a large amount of water, from a well which may ultimately be determined unnecessary. It also appears that no other persons would be harmed by a possible delay in preparing the disputed technical report, as the overall cleanup is continuing. Finally, the need for the well itself is in dispute, raising substantial questions of fact.

IV. ORDER

IT IS HEREBY ORDERED THAT the requested stay of Provision C2.a Task 1 and the last sentence of Provision C2.b Task 2 is granted.

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 December 15, 1988.

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

NO: None

ABSENT: None

ABSTAIN: None


Maureen Marche
Administrative Assistant
to the Board

