

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WQ 2001 - 13

In the Matter of the Petition of

THE CITY OF TURLOCK, MUNICIPAL SERVICES DEPARTMENT

For Review of Waste Discharge Requirements Order No. 5-01-122
and Cease and Desist Order No. 5-01-123
[NPDES Permit No. CA0078948]
for the City of Turlock Water Quality Control Facility,
Issued by the
California Regional Water Quality Control Board,
Central Valley Region

SWRCB/OCC FILE A-1382

BY THE BOARD:

On May 11, 2001, the California Regional Water Quality Control Board, Central Valley Region (Regional Water Board), adopted waste discharge requirements in Order No. 5-01-122 and Cease and Desist Order No. 5-01-123 for the City of Turlock (City). The waste discharge requirements regulate the discharge of secondarily treated effluent from the City's Water Quality Control Facility to Harding Drain, a tributary of the San Joaquin River. On May 30, 2001, the City filed with the State Water Resources Control Board (State Water Board or Board) a petition for review and an amended petition for a stay¹ of the requirements and cease and desist order. On June 11, 2001, the City filed an amended petition for review of the Regional Board orders.

¹ The City initially filed a stay petition on May 16, 2001. By letter dated May 17, 2001, from Elizabeth Miller Jennings, State Water Board, to Katharine E. Wagner, the City's counsel, the City was advised that its stay request must be accompanied by a petition for review.

On June 26, 2001, the City filed a petition for a writ of mandate and an ex parte application for a stay of the Regional Water Board orders in the Stanislaus County Superior Court against both the State and Regional Water Boards.² To avoid the expense of litigation, this Board and the Regional Water Board entered into a settlement agreement with the City, in which the Board agreed to a partial stay of Order Nos. 5-01-122 and 5-01-123, pending the Board's ultimate disposition of the City's petition for review. This Order effectuates the settlement agreement.

I. BACKGROUND

Order No. 5-01-122 reissued waste discharge requirements previously contained in Regional Water Board Order No. 95-059. Order No. 5-01-122 contains effluent limitations for several pollutants that were not limited under Order No. 95-059. These pollutants include, among others, copper, cyanide, zinc, bromodichloromethane, aluminum, molybdenum, tributyltin, iron, ammonia, and manganese. The City contends that its existing treatment facilities cannot assure consistent compliance with many of these new limitations yet, for some pollutants, Order No. 5-01-122 does not include a compliance schedule. Thus, the City alleges that it will be exposed to serious civil and criminal liability for permit violations in the interim until the necessary treatment system improvements can be completed. For other pollutant limitations, Order No. 5-01-122 does include a compliance schedule but the City asserts that the schedule is too short. Consequently, the City alleges that it will be forced to begin the planning and design of advanced treatment facilities to meet the schedule before this Board has taken final action on the City's petition.

² The case is entitled *City of Turlock, Municipal Services Department v. California State Water Resources Control Board; and California Regional Water Quality Control Board for the Central Valley Region*, California Superior [footnote continued next page]

To avoid the expense of litigating the City's ex parte stay application, the State and Regional Water Boards entered into a settlement agreement with the City in which the Board agreed to temporarily stay the final effluent limitations in Order No. 5-01-122 for copper, cyanide, zinc, bromodichloromethane, aluminum, molybdenum, tributyltin, iron, and manganese and their associated compliance schedules³. The stay will remain in effect pending the Board's final disposition of the City's petition for review on the merits, pursuant to California Code of Regulation, title 23, section 2052(a)(2). The Board also agreed that if the Board ultimately approves the contested effluent limitations the Board will extend their associated compliance schedules by a period of time equal to the time that the effluent limitations were stayed. In addition, the Board agreed to stay the effluent limitations for ammonia pending completion of the City's nitrification facility or the Board's final disposition of the City's petition for review, whichever occurs first.

The City, in return, agreed to dismiss without prejudice its Petition for Writ of Mandate and Request for Stay against the State and Regional Water Boards on file with the Stanislaus County Superior Court, and to withdraw its stay petition before this Board. The City also agreed to proceed with its projects to install nitrification facilities and, in aid of its planned reclamation project, to install coagulation and filtration capability at the City's treatment plant. In addition, the City agreed to continue all pollutant source identification and control activities that are required under Order Nos. 5-01-122 and 5-01-123.

Court, County of Stanislaus Case No. 291436.

³ Neither Order No. 5-01-122 nor Order No. 5-01-123 includes a compliance schedule for effluent limitations for iron, manganese, or tributyltin.

II. ORDER

IT IS HEREBY ORDERED that the final effluent limitations for aluminum, copper, cyanide, zinc, bromodichloromethane, molybdenum, tributyltin, iron, ammonia, and manganese in Effluent Limitations B.1 of Order No. 5-01-122 are stayed, pending final action by the Board on the City's petition for review.

IT IS FURTHER ORDERED that the effective date of the final effluent limitations for copper, cyanide, zinc, and bromodichloromethane, presently set for May 1, 2006, as noted in fn. 1 of Effluent Limitations B.1 of Order No. 5-01-122, is stayed, pending final action by the Board on the City's petition for review.

IT IS FURTHER ORDERED that the compliance schedule for copper and zinc contained in Provision G.8 of Order No. 5-01-122 is stayed, pending final action by the Board on the City's petition for review.

IT IS FURTHER ORDERED that the compliance schedule for aluminum and molybdenum, presently set for May 1, 2006, as noted in Directive 4 of Cease and Desist Order No. 5-01-123 is stayed, pending final action by the Board on the City's petition for review.

IT IS FURTHER ORDERED that the Board's adoption of this Order shall not be deemed relevant to or have any bearing on the Board's ultimate disposition of the City's petition for review on the merits.

IT IS FURTHER ORDERED that the Board's adoption of this Order shall not be deemed to provide cause for the City's failure to comply or delay in complying with any other provisions of Order No. 5-01-122, including but not limited to the interim effluent limitations in Effluent Limitations B.2 for copper, zinc, cyanide, and bromodichloromethane, or Order No. 5-01-123.

IT IS FURTHER ORDERED that, except as provided in this Order, the City's petition and first amended petition for a stay of Order Nos. 5-01-122 and 5-01-123 are deemed to be withdrawn.

IT IS FURTHER ORDERED that this Order shall take effect 30 days from the date it is adopted by the Board.

CERTIFICATION

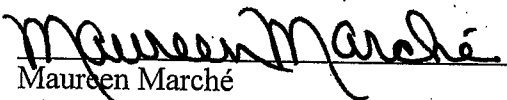
The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on September 20, 2001.

AYE: Arthur G. Baggett, Jr.
Peter S. Silva
Richard Katz

NO: None

ABSENT: None

ABSTAIN: None


Maureen Marché
Clerk to the Board