

State of Vermont
EATER RESOURCES BOARD

In re: **Ann and Paul DesLauriers,**
Docket No. EPR-93-05

ORDER DEEYING STAY

On October 13, 1994, Eric Fritzeen, the applicant in the above-captioned revocation appeal, **filed** a Notice of Appeal from the Board's **decision, seeking** review by the Vermont Supreme Court. On October 17, 1994, the applicant filed a Motion to Stay the Board's decisions in the above-captioned **revocation** appeal. The applicant **specifically** requested that the Board stay its decision on the merits, issued June 1, 1994, and its memorandum of decision on post-decision motions, issued September 14, 1994. The applicant filed his stay request, pursuant to Rule 31 of the Board's Rules of Procedure.

No decision of the Board is automatically stayed by the filing of an appeal with the court. However, the Board may grant, or the reviewing court may order, a **stay** upon appropriate terms. 3 V.S.A. § 815(a).

Rule 31 of the Board's Rules of Procedure provides that a party aggrieved by a final order of the Board may request a stay from the **Board by** filing a written motion. The rule further provides that:

"[i]n deciding whether to grant or deny a stay, the Board **may** consider the hardship to the parties, the impact, if any, on the values sought to be protected by the decision at issue, and any effect upon public health, safety or general welfare.?"

The applicant made his request on the assumption that without a stay he and the five families residing **in his six** condominium units in **Colchester, Vermont,** would suffer significant **hardship, presumably because** they would be prohibited **from using** the septic system *that was found by the Board to be not in conformance with the Environmental Protection Regulations (EPRs).* The applicant claimed that there is no evidence that the continued operation of the septic system **will** have an **adverse effect** on the public health, safety and general welfare, because he asserts that the system is operating properly and that it will be monitored under a protocol designed by his engineer.

The applicant misunderstands **the effect** of the Board's order of June 1, 1994. Consistent with the Board's appellate authority to review the action **of the** Secretary of ANR pursuant to 3 V.S.A. § 2873(c)(4), the Board did not revoke the applicant's Water Supply and Wastewater Permits **#WW-4-0261-2** and **#WW-4-0261-3**. Rather, the

Order denying Stay.

In re: Ann and Paul DesLauriers,

Docket No. **EPR-93-05**

page 2 of 2

Board ordered that **the decision** of the Department of Environmental Conservation (DEC), **the Secretary's** designee, should be **reversed** and that this matter be remanded to the DEC 'for further' revocation **proceedings consistent with the conclusions in the Board's decision.** **In re: Ann and Paul DesLauriers,** Docket No. **EPR-93-05,** Decision at 13-14 (June 1, 1994). **The Board's subsequent** Memorandum of Decision, **denying the applicant's Motion to Correct Decision and Motion to Supplement** the Record of Appeal, does not **alter this** directive. **In re: Ann and Paul DesLauriers,** Docket No. **EPR-93-05,** Memorandum of Decision at 6 (September 14, 1994).

As a consequence, the asserted hardship that the applicant has identified is speculative at best. Denial of a stay will not require the immediate shutdown of the applicant's septic system. Under the terms of the Board's order, the DEC **must first complete** its revocation proceedings and determine that revocation is indeed appropriate prior to **initiating any kind of enforcement or abatement action.** Therefore, the Board determines **that the applicant's** request for stay is not ripe for **action and** therefore **should** be denied. SO ORDERED--

, Dated at Montpelier, Vermont, this **23rd** day of November; 1994.

Concurring:

William Boyd Davies
Stephen Dycus
Ruth. Einstein

Vermont Water Resources Board
by its Chair



William Boyd Davies

¹ Of course, if the applicant's **system were to fail, the ANR might, and rightfully should, seek remedial action on its own initiative.**