

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of)
)
COALITION OF WEST COVINA)
HOMEOWNERS' ASSOCIATIONS)
)
For Review of Order No. 87-39 of the)
California Regional Water Quality)
Control Board, Los Angeles Region.)
Our File No. A-478.)

ORDER NO. WQ 88-5

BY THE BOARD:

Petitioner, the Coalition of West Covina Homeowners' Associations (Homeowners), filed a timely petition to review Order No. 87-39 of the California Regional Water Quality Control Board, Los Angeles Region (Regional Board). Order No. 87-39 sets waste discharge requirements for the disposal to land of nonhazardous solid and inert solid wastes at a 100 acre disposal area within the BKK Corporation's (BKK's) West Covina landfill. The Homeowners contend that the Regional Board should have prepared an environmental impact report before approving Order No. 87-39.¹

¹ We have determined that all other contentions raised by the Homeowners' petition fail to raise substantial issues that are appropriate for our review. Therefore, we will limit our review to the issue discussed in this order. See Cal. Code Reg. Section 2052. The Homeowners' other contentions involve: 1) the adequacy of the ground water collection system; 2) the adequacy of the leachate collection and removal system; 3) the adequacy of the liner; 4) a request that the waste discharge requirements specify the manner by which hazardous wastes will be kept out of the Class III disposal area; 5) a request for greater specification of daily cover requirements; 6) a suggestion for bailfilling of garbage; 7) air quality issues; 8) claims concerning the availability of information to the public. These issues are reviewed and responses are given in a Staff Report by the Division of Water Quality. The Staff Report concludes that none of these contentions raises a substantial issue that is appropriate for our review.

I. BACKGROUND

BKK's West Covina landfill is a 583-acre site in the San Jose Hills about three miles south of the civic center of the City of West Covina. In 1963, the Regional Board issued separate waste discharge requirements for disposal of nonhazardous waste at two disposal areas within the site. The site has been in continuous operation, and accepted nonhazardous waste for disposal, since that time. Later in 1963, the Regional Board revised the waste discharge requirements for one of the two disposal areas, finding that the area was suitable for disposal of hazardous wastes and setting conditions for accepting hazardous wastes. BKK accepted hazardous wastes for disposal at the hazardous waste disposal area between 1969 and 1984, after which BKK has accepted only nonhazardous waste.

On February 3, 1971, the City of West Covina adopted a revision to the unclassified use permit for the BKK landfill. The revision to the unclassified use permit extended the boundaries, increased the capacities, and extended the life expectancy of the BKK landfill. The revision authorized use of the entire 583-acre site, except for a minimum setback, exterior slopes, and a contingency reserve of eight percent of the acreage, as a sanitary landfill. The permit indicates that the landfill would have a capacity of approximately 120 million cubic yards, and operate for approximately thirty-five years.²

² The revision to the unclassified use permit required submission of a master development plan showing the plans for ultimate development of the entire 583 acre site. The expanded use authorized by the revision took effect upon approval of the master development plan, which indicated a landfill capacity of approximately 113.5 million cubic yards.

On November 18, 1974, the Regional Board issued Order No. 74-380, setting waste discharge requirements for the entire 583-acre site. Order No. 74-380 approved an expansion of the portion of the site used for hazardous waste disposal, authorizing use of a total of 140 acres for hazardous waste disposal. Order No. 74-380 approved use of the remaining available acreage within the site for disposal of nonhazardous waste. The Regional Board has revised the waste discharge requirements several times since then. One of these revisions to the waste discharge requirements, Order No. 78-140, found that BKK had no immediate plans for use of the nonhazardous waste disposal area below the hazardous waste disposal area. Order No. 78-140 required BKK to submit specific design criteria for construction of a leachate collection system before operation of the nonhazardous waste disposal area.

On March 23, 1987, the Regional Board adopted Order 87-139, setting waste discharge requirements for a Class III (nonhazardous solid waste) disposal area within the BKK landfill site. The Class III disposal area encompasses approximately 100 acres, and has capacity for approximately 10 to 12 million tons of nonhazardous and inert solid waste. The Class III disposal area will reach capacity in the summer of 1995. The Regional Board found it was exempt from the provisions of the California Environmental Quality Act (CEQA), Cal. Pub. Res. Code Section 21000 et seq., because the waste discharge requirements were issued for an ongoing project. See 14 Cal. Code. Reg. Section 15261. The Homeowners petition for review.

II. CONTENTION AND FINDING

Contention: The Homeowners contend that an environmental impact report should have been prepared before the Regional Board adopted Order No. 87-139.

Finding: The California Environmental Quality Act establishes the circumstances under which an environmental impact report must be prepared before a public agency approves a project. See generally Cal. Code Reg. Section 15000 et seq. (State CEQA Guidelines). An environmental impact report may be required where a permit is issued for a project which may have a significant effect on the environment. See id. Sections 15002(f)(1), 15378(a)(3). The term "project" refers to the activity which is being approved, not to each separate governmental approval which may be issued. Id. Section 15378(c).

There is a statutory exemption from the California Environmental Quality Act for an "ongoing project." Id. Section 15261(b). See Cal. Pub. Res. Code Sections 21169, 21171. Where a private project has received approval of a permit, license or other entitlement for use before April 5, 1973, later approvals ordinarily are exempt from the California Environmental Quality Act:

"Where a project has been granted a discretionary governmental approval for part of the project before April 5, 1973, and another or additional discretionary approvals after April 5, 1973, the project shall be subject to CEQA only if the approval or approvals after April 5, 1973, involve a greater degree of responsibility or control over the project as a whole than did the approval or approvals prior to that date."
14 Cal. Code Reg. Section 15261(b)(3).

In this case, the Class III disposal area is part of a larger project, the BKK landfill, which was approved by the City of West Covina before April 5, 1973. Operation of the Class III disposal area is within the scope of the activity approved by the revision to BKK's unclassified use permit approved in 1971.³ The Class III disposal area is within the area approved for disposal of nonhazardous waste. The capacity of the Class III disposal site will not cause the volume of waste disposed of at the BKK landfill to exceed that estimated in the original approval. The anticipated life of the Class III disposal area does not exceed that projected when the City of West Covina approved the BKK landfill in 1971. The record does not reveal any significant changes with respect to the Class III disposal area which would result in environmental impacts that would not have occurred from the landfill operations originally applied for by BKK.

The Homeowners do not dispute that the City of West Covina approved the project before April 5, 1973,⁴ but contend that an environmental impact report is required because the Regional Board exercised a greater degree of responsibility and control over the site when it issued Order No. 87-39. We do not agree.

In approving the 1971 revision to the unclassified use permit, as well as in prior land use approvals for the site, the City of West Covina exercised

³ The 1971 approval anticipated final use of the BKK site for recreational purposes, a use which may be incompatible with post-closure requirements for the hazardous waste disposal area. See 22 Cal. Code Reg. Sec. 67217. But the Class III disposal area which is the subject of this petition is not inconsistent with ultimate use for recreational purposes.

⁴ The City of Waste Covina approved of the master development plan required as a condition of the permit after April, 5, 1973, but that action did not involve as great a degree of responsibility over the project as a whole as did approval of the unclassified use permit.

general governmental powers. The Regional Board, on the other hand, has more limited responsibility, focusing on protection of water quality and the prevention of nuisance. See generally Cal. Code Reg. 15051(b)(1) (an agency exercising general governmental powers ordinarily should be lead agency for purposes of complying with the California Environmental Quality Act.)

The Homeowners point out that Order No. 87-39 applies the specific requirements of the State Water Resources Control Board regulations for discharges of waste to land. 23 Cal. Code Reg. Section 2510 et seq. (Subchapter 15). But the Regional Board exercised no greater responsibility for the project than before; it simply exercised its responsibility for the protection of water quality in accordance with the more detailed requirements of the regulations in effect at the time. People v. Kern County, 39 Cal. App. 3d 830, 115 Cal. Rptr. 67 (1974), is inapposite. In Kern, the County determined that its approval action after April 5, 1973, involved a greater degree of responsibility and control over the project than prior approvals. Id. at 835 n.5, 115 Cal. Rptr. at 70-71 n.5. Here, the Regional Board determined that its approval did not involve a greater degree of responsibility than that exercised when the City of West Covina approved the unclassified use permit.

In addition, Order No. 87-39 applies only to the Class III disposal area. Previous decisions by the City of Waste Covina and the Regional Board exercised greater control over the project as a whole -- the 583-acre BKK landfill.⁵

⁵ In support of their request for preparation of an environmental impact report, the Homeowners argue that a substantial body of opinion considers the effect of the project to be adverse. The evidence cited by the Homeowners in support of their argument concerns the effect of the operation of the entire BKK landfill, not just the Class III disposal area. The Homeowners argument (footnote continued on page 7)

This case is similar to Committee for a Progressive Gilroy v. State Water Resources Control Board, 192 Cal. App. 3d 847, 237 Cal. Rptr. 723 (1987). In that case, the City of Gilroy had originally approved an environmental impact report for a sewage treatment plant, and the Regional Board approved waste discharge requirements for a discharge up to a specified volume. Later, as a result of problems with the operation of the plant, the Regional Board issued waste discharge requirements for a reduced volume of discharge. After those operational problems were resolved the Regional Board issued waste discharge requirements authorizing a discharge at the level originally authorized. The Court of Appeal held that allowing an increase in discharge up to the volume originally authorized did not constitute a new project for purposes of the California Environmental Quality Act:

"The reestablishment of discharge requirements within previously approved levels is merely a separate governmental reapproval of the original project and does not itself constitute a new project under CEQA." Id. at 864, 237 Cal. Rptr. at 733.

So too here, Order No. 87-39 approved of a discharge of waste within previously approved levels. Order No. 87-39 authorizes disposal of nonhazardous and inert solid waste within an area approved for disposal of those wastes by the City of Waste Covina's unclassified use permit and Regional Board Order No. 74-380. Regional Board Order No. 78-140 also authorized disposal of nonhazardous waste within the area, while making operation of the nonhazardous waste disposal area contingent upon Regional Board approval of a leachate collection system. In authorizing operation of

underscores the point that the project as a whole is the operation of the entire landfill, not just the Class III disposal site.

the Class III disposal area, Order No. 87-39 merely constitutes a separate reapproval of a portion of the original project, not a new project.⁶

III. SUMMARY AND CONCLUSIONS

The Regional Board was not required to prepare an environmental impact report before issuing waste discharge requirements for the Class III disposal area within the BKK landfill site. The project is exempt from the California Environmental Quality Act as an ongoing project.

⁶ The Homeowners also argue that the Regional Board's decision not to require an environmental impact report was unduly influenced by comments from other public agencies concerning the BKK site, including correspondence indicating that failure to allow continued disposal of nonhazardous solid waste at the BKK site would result in environmental problems. To the contrary, the record indicates that the Regional Board's based its decision not to prepare an environmental impact report upon its determination that Order No. 87-39 was issued for an ongoing project.

The Homeowners also request that, even if the State Water Resources Control Board concludes that Order No. 87-39 was issued for an ongoing project, the Board, in its discretion, should nevertheless require preparation of an environmental impact report be prepared. The potential adverse environmental impacts that could result from halting use of the Class III disposal area pending completion of environmental documentation, as indicated in the interagency correspondence cited by the Homeowners, is sufficient reason not to require preparation of an environmental impact report which is not required by the California Environmental Quality Act. The record indicates that the Regional Board had sufficient information to conduct a full technical review of the Class III disposal area.

IV. ORDER

The petition is denied.

CERTIFICATION

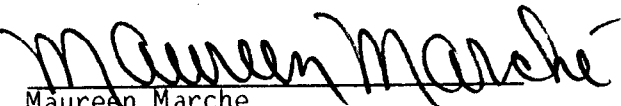
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 16, 1988.

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

NO: None

ABSENT: Edwin H. Finster

ABSTAIN: None


Maureen Marche
Administrative Assistant to the Board

