

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of the )  
CITY OF PITTSBURG )  
For Review of Waste Discharge )  
Requirements for the Keller Canyon )  
Landfill Company, a Subsidiary of )  
Browning-Ferris Industries, Contained )  
in Order No. 91-052 of the California )  
Regional Water Quality Control Board, )  
San Francisco Bay Region. Our File )  
No. A-741. )  
\_\_\_\_\_ )

ORDER NO. WQ 92-05

BY THE BOARD:

I. INTRODUCTION

Keller Canyon Landfill Company (KCLC), a subsidiary of Browning-Ferris Industries, proposed construction and operation of a Class II landfill in Contra Costa County, near the City of Pittsburg. The City of Pittsburg objects to the location of the proposed landfill and has raised a number of technical and procedural issues in an attempt to deter the county and the Regional Water Quality Control Board from approving the Keller Canyon site for a landfill. Despite the objections, the Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board) on March 20, 1991, issued waste discharge requirements for a Class II landfill in Order No. 91-052. The City (Petitioner) asked us to review the Regional Water Board's order.

On March 4, 1992, Petitioner submitted a request for a stay of the effect of Order No. 91-052 until we can complete our review of the waste discharge requirements for the Keller Canyon landfill contained in that Order. On March 31, 1992, we held a public hearing for oral argument regarding Petitioner's request for a stay, and on the merits of Petitioner's substantive contentions in this matter.

## II. DISCUSSION

Water Code Section 13321 authorizes us to stay the effect of Regional Water Board actions pending our decision on the merits of a petition. Our regulations regarding the issuance of such stays, recognizing the extraordinary nature of a stay remedy, place a heavy burden of proof on the person seeking a stay. They require a Petitioner to allege facts and produce proof of three elements:

(1) Substantial harm will result to the Petitioner or the public interest if a stay is not granted;

(2) There will be no substantial harm to other interested parties or to the public interest if a stay is granted; and

(3) Substantial issues of law and fact have been raised in the petition. (Title 23, Cal. Code of Regs. Section 2053.)

## III. CONTENTIONS AND FINDINGS

1. Contention: Petitioner contends that it will suffer substantial harm if the stay is not granted. It contends that discharges of waste to the Keller Canyon landfill will

create an unacceptable risk of pollution to ground and surface water resources due to the unresolved questions about the stability of the natural materials upon which the landfill's containment structures are built and about the ability to detect leakage from the landfill with the monitoring system proposed by KCLC.

Finding: Petitioner's concerns about the stability of the natural materials upon which the landfill is built will ultimately be resolved when we decide this matter on its merits. The question before us now is whether the possibility that KCLC's engineering consultants have failed to undertake the proper analysis of slope stability and have failed to address potential instabilities in their plans for the construction of the landfill is so great that we should prevent KCLC from discharging any waste to the landfill for the short period before we can address these concerns conclusively on the merits. We do not believe that this is the situation in this case.

We are not convinced that the volume of wastes that KCLC could discharge before we make our determination on the substantive merits could jeopardize the structural stability of the toe berm, or that Contra Costa County is likely to experience such rainfall within the period of the stay that the stability of the side slopes at the landfill site would be endangered.

2. Contention: Petitioner contends that granting the stay will not cause substantial harm to the public interest or to other interested persons because, even though Contra Costa County's remaining access to landfill capacity is severely

limited (both within the County and by export to neighboring counties), there is enough capacity to accommodate the County's waste stream for the period of time covered by the stay. In addition, Petitioner notes that KCLC has proceeded with construction at its own risk, despite the issues raised by Petitioner's experts.

Findings: Petitioner's analysis of Contra Costa County's waste disposal capacity and export options is vigorously disputed by the County and we cannot determine the precise moment at which the County will exhaust its ability to manage its municipal solid waste. However, it is clear that access to the Keller Canyon landfill is of great concern to the County and to the municipalities within the County. Contra Costa County and several of its affected municipalities have asserted their immediate need for the disposal capacity represented by this project.

In addition, KCLC will be harmed if it cannot accept waste in accordance with its contractual commitments to Contra Costa County.

#### IV. CONCLUSIONS

The request for a stay should be denied because Petitioner has failed to meet its burden of demonstrating that it would suffer substantial harm if the stay is denied and that neither the public interest nor any other interested person would be harmed if the stay is granted.

Nothing in this order implies a decision by the Board on the merits of the petition. The merits of the petition will be decided at a later date.

V. ORDER

It is hereby ordered that the request for a stay 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 April 16, 1992.

AYE: W. Don Maughan  
Eliseo M. Samaniego  
John Caffrey  
Marc Del Piero  
James M. Stubchaer

NO: None

ABSENT: None

ABSTAIN: None

  
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Maureen Marché  
Administrative Assistant to the Board

