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ENVIRONMENTAL, LAND USE
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REPLY TO: WALNUT CREEK

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December 16, 2014

Via Hand Delivery December 16, 2014

The Hon. Karen Mitchoff, Chair
and Members of the Board
Contra Costa County Board of Supervisors
651 Pine Street
Martinez, CA 94553

Re: Agenda Item D. 7; Permit review to consider new and modified conditions
of approval for Keller Canyon Landfill's Land Use Permit

Dear Chair Mitchoff and Members of the Board:

This undersigned serves as counsel for Keller Canyon Landfill Company, Inc. ("KCLC"), the permittee in the pending proceeding for County review and update of the Land Use Permit for the Keller Canyon Landfill. I am writing to address one of the suggested modifications forwarded to you by Mr. Kopchik, Interim Director of the Conservation & Development Department ("CDD") following the County Planning Commission's review completed on November 18, 2014.

Specifically, KCLC believes changes can and should be made to the proposed language for LUP conditions 8.1, 8.5 and 8.6 included in the CDD staff mark up of proposed permit conditions for Recommendation No. 3 in your Board Order, dealing with eligible vehicles and the guidelines for direct haul of materials to the landfill facility. KCLC's suggested text revisions are included as Attachment A to this letter, with suggested changes noted in the blue underlined and highlighted text.

The brief background and need for the modification is as follows. For the past 20 years of the landfill's operation pursuant to the LUP, the site has been receiving construction and demolition debris type waste loads directly brought to the landfill, in accordance with the direct haul guidelines. This is waste material that in the landfill's experience has largely been pre-processed by generators prior to delivery to the landfill. However, in the course of the CDD staff and Planning Commission review of the LUP as directed by the permit and your Board, certain

competitor companies – using lawyers, consultants and surrogate entities with names like the California Compost Coalition and Organics Waste Solutions, LLC -- have aggressively lobbied staff and the Planning Commission for changes to conditions 8.1, 8.5 and 8.6, urging the staff and Commission to adopt the revised condition language embodied in Recommendation No. 3, and even urging the Commission to have gone further in attempting to force waste materials that have been received at the landfill via direct haul to be diverted to other facilities, including of course facilities owned by competitors. The lawyers and businesses are strangers to the Keller permit who inappropriately seek to use this review proceeding to further their business interests at the expense of Keller Canyon Landfill and the County.

The KCLC language proposal before you is a slight modification to the current draft CDD permit update language that would allow the landfill site itself to undertake additional processing of this waste material, subject of course to compliance with environmental review requirements of CEQA¹ and the permitting process. The language stipulates that Keller Canyon will apply for permits by April 1, 2015 to perform additional processing at the landfill site for materials it currently receives and has taken over the past 20 years. This is not a new waste stream and would not change the inbound traffic into the facility. By doing supplemental on site processing, the landfill will be taking the extra step to capture excess materials suitable for diversion prior to disposal, while maintaining the status quo allowing the facility to continue operations without loss of these waste streams and materials to economically motivated competitors. The landfill would implement the new CDD language for conditions 8.1, 8.5 and 8.6 once permits were obtained to implement additional processing. Until then, the current practice, reflecting the status quo, would remain in place. This approach is in our judgment fair, given that implementing the CDD language could disrupt the inbound waste streams and result in a loss of facility revenues and franchise fees to the County as a result. It seems patently unfair and a brazen step that business competitors -- companies who have not made the kind of investment of the magnitude required to establish a state of the art solid waste management facility like Keller Canyon -- should be able to use another facility's permit review process to implement what amounts to a flow control measure to take away business in order to reap economic benefits for their own businesses.

The Keller Canyon facility has been extensively regulated by the County and other agencies for the past 20 years, and the LUP permit requirements have been interpreted and administered by the County over the same period authorizing the direct haul of demolition and debris materials. The landfill pays franchise fees to the County for receipt of this material. Fairness in the administration of the LUP counsels in favor of our suggested approach. Everyone wins in this situation: traffic is not altered and redistributed to other facilities with unknown consequences; Keller Canyon rightfully retains business revenues it has earned in the marketplace; the facility achieves additional diversion; and the stability of revenues means that

¹ California Environmental Quality Act, Pub. Res. Code section 21000 *et seq.*

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that County's franchise fees on the facility's receipt of this waste material continue, benefitting the County.

We respectfully request that the Board approve the proposed new and modified conditions of approval for the Keller Canyon Landfill Land Use Permit (LUP), County File #LP89-2020, reflected in Exhibit B, but substituting the specific modifications to conditions 8.1, 8.5 and 8.6 set forth in attachment A to this letter.

Thank you for your consideration of these matters.

Very truly yours,



Scott W. Gordon

Encls.

SWG:cg

cc: Mike Caprio, Northern California Area President
Rick King, KCLC General Manager
Tim Argenti, General Manager
Ms. Deidra Dingman, CCC Solid Waste Programs Manager

Requested Changes in Highlighted and Underlined Blue Text:

8.1 Eligible Vehicles. The Landfill operator shall admit only the following refuse transport vehicles:

- a) Transfer station trucks (vans). Transfer stations shall have a Waste Management Program, which includes hazardous waste screening and resource recovery operations, which may be subject to the approval of the Board of Supervisors if deemed necessary for consistency with the Countywide Integrated Waste Management Plan.
- b) Demolition and construction material trucks hauling debris that would not be recycled or otherwise diverted from disposal and is not processed onsite or at a local Transfer Station. There are waste reduction requirements that apply to such wastes generated by businesses and industries, therefore the operator shall assist the County to help ensure compliance with such requirements or goals through implementation and compliance with Conditions 8.5 – 8.7.
- c) Incinerated sewage sludge-hauling trucks originating at utilities.
- d) Sewage and water treatment plant sludge and other byproduct trucks with loads complying with San Francisco Regional Water Quality Control Boards solids-to-liquid requirements.
- e) Trucks hauling Designated Wastes approved for this landfill by the Regional Water Quality Control Board.
- f) Other specialized waste transport trucks, hauling wastes identified in the Landfill's Solid Waste Facilities Permit which cannot be feasibly processed onsite or through a local Transfer Station.
- g) The provisions set forth in subsections (b) and (f) above shall become effective on January 1, 2016 or upon Landfill Operator's receipt of all necessary permits and approvals for onsite processing of waste materials, whichever is later ("Implementation Date"). Consideration and issuance of permits and approvals is subject to compliance with CEQA and applicable laws. Prior to and until the Implementation Date, Landfill Operator's current practice and procedures for Eligible Vehicles shall remain in effect. Landfill Operator shall apply for such permits and approvals by April 1, 2015.

8.5 Direct Haul. Only wastes in the prescribed vehicles which is not recycled or otherwise diverted from disposal if processed onsite or through a local transfer station may be considered for direct haul pursuant to the Procedures specified in Condition 8.6. Loads containing materials that will be used as cover or otherwise beneficially reused on-site and treated as diversion under the Integrated Waste Management Act may be direct hauled without going through a transfer station.

8.6 Direct Haul Procedures. Direct haul process and materials shall be consistent with the Solid Waste Facility Permit (No. 07-AA-0032), this LUP, and applicable policies adopted by the Board of Supervisors including those identified in 8.6(k) below. The operator shall ensure new customers receive information consistent with i) and j) prior to gaining access to the site. The operator shall conduct screening procedures specified in a) through h) prior to allowing customers to direct haul waste/material loads for disposal at the landfill. Operator shall provide written confirmation that eligibility has been demonstrated consistent with these procedures prior to loads being accepted for disposal. Operator shall summarize results of direct haul eligibility screening completed each quarter in the direct haul reports required under Condition 8.7. These requirements shall not apply to loads being received for onsite processing. These provisions shall become effective on January 1, 2016 or upon Landfill Operator's receipt of all necessary permits and approvals for onsite processing of waste materials, whichever is later ("Implementation Date"). Consideration and issuance of permits and approvals is subject to compliance with CEQA and applicable laws. Prior to and until the Implementation Date, Landfill Operator's existing and past practice and procedures for Direct Haul waste materials shall remain in effect. Landfill Operator shall apply for such permits and approvals by April 1, 2015.