



July 9, 2018

Chair Karen Mitchoff
Members of the County Board of Supervisors
Contra Costa County
651 Pine Street, First Floor
Martinez, California 94553

Re: Agenda Item: D.6: Update Investigation on Waste Allegedly Sent to Keller Canyon Landfill

Dear Chair Mitchoff and Members of the County Board of Supervisors:

Please accept the following comments regarding the Staff Report prepared by the Contra Costa County (the “County”) Health Services Director for Agenda Item D.6 regarding the “Update Investigation on Waste Allegedly Sent to Keller Canyon Landfill (“Keller Canyon”) for the meeting of the Contra Costa County Board of Supervisors (the “Board”) scheduled for July 10, 2018 (“Staff Report”).

I want to thank the Board for giving this matter the serious attention that it deserves. There are a lot of interrelated issues and concerns that I have tried address below.

The top priority, of course, is safeguarding the health and safety of the public and the environment. The hard truth is that this situation may require at least the temporary closing of Keller Canyon so that boring samples can be taken and analyzed for radioactive analysis and to ensure that any radioactive contamination that is found is not buried further under garbage, thereby making it more difficult and costly to remove.

Yes, I am asserting that whatever radioactive material is found in Keller Canyon has to be removed. Keller Canyon is not a disposal site for radioactive waste. Pittsburg residents have been forced, by the County, to live with the dump for decades and endure the effects of putrid waste from all over the County and beyond. Keller Canyon has failed to live up to its promises and legal obligations. Forcing Pittsburg residents to now have to endure radioactive contamination in the dump is unacceptable. As elected officials, each Supervisor has a responsibility to be deeply aware of the lives that will be affected by the presence of this type material so close to homes, wildlife, and under the feet of landfill workers.

Radioactive material, if present, simply cannot stay in the landfill.

The Board should put a stop to Keller Canyon’s continued profiteering from Superfund sites that endangers the health and safety of the public

On June 21, 2018, Contra Costa Environmental Health hosted a public forum meeting where Rick King, General Manager for Keller Canyon, asserted that the dirt from Hunter’s Point was used as cover at Keller



Canyon. The story that he gave is that Keller Canyon would receive dirt from Hunter's Point that would then be used as cover at the landfill that same day or perhaps the following day.

There are a few issues with this. To start with, as I understand it, Keller Canyon has been using green waste as daily cover since about the year 2000 and uses dirt as intermediate cover when it is time to move on to another disposal cell. Meaning that the dirt stays on top of the garbage until some time in the future when the landfill uses that cell again.

Second, if Keller Canyon was using dirt from Hunter's Point as any kind of daily cover, it means that Keller Canyon left dirt, contaminated with chemicals and possible radioactive waste, on the surface of the landfill at least overnight where high-winds passing over the landfill could blow this dirt onto the homes and property of nearby residents.

This means that the contaminated dirt from Hunter's Point was not contained within the landfill. Instead, this contaminated dirt has been spread across the homes and property of Pittsburg residents, creating the potential for multiple Superfund sites, the landfill itself, the homes of nearby residents, and everything in between.

This is a horrifying scenario for which Rick King has asserted the underlying facts to be true. More importantly, Rick King has acknowledged that Keller Canyon continues to receive waste material from other Superfund sites. This means that more potentially contaminated dirt is being taken to Keller Canyon where it is certain to blow onto the homes and property of nearby residents.

Even as the County is faced with having to address concerns over communities being poisoned with radiation, Keller Canyon continues to receive dirt or waste contaminated with other dangerous carcinogens that are then used in a way that maximizes the exposure to the surrounding communities.

Keller Canyon keeps profiting, while neighboring communities are exposed to dangerous substances with potentially lethal implications. On top of that, because Keller Canyon is likely classifying this highly contaminated waste as dirt, money collected from those waste loads does not make it into the mitigation fund, which is based on disposal tons.

Taking it a step further, now *the County* wants to use mitigation funds to investigate Keller Canyon's unlawful and potentially lethal receipt and use of radioactive and contaminated wastes. It just doesn't add up that Keller Canyon can continue to profit from exposing the public to dangerous carcinogens and radiation and it is not then required to take financial responsibility Citizens should not have to foot the bill.

This simply cannot stand. The County has to put an end to Keller Canyon's receipt of material from Superfund sites in order to protect the health of the public and Keller Canyon has to pay for the cost of investigation and clean up.

Keller Canyon is in violation of its County Permit because it is expressly prohibited from accepting radioactive waste and is required to have a written screening procedure for all ineligible wastes

Keller Canyon is expressly prohibited, among other things, from allowing radioactive and hazardous or toxic wastes from being disposed at the landfill, under Condition 6.4 of its Land Use Permit (“LUP”). Those wastes are ineligible for disposal at the landfill. Keller Canyon is also required, among other things, to prepare in writing a program for identifying eligible vehicles and screening loads at the landfill entrance, random sampling and inspection of ineligible wastes, and checking loads at the landfill disposal area, under Condition 7.1 of its LUP.

Keller Canyon’s LUP is currently under review by the Contra Costa Planning Commission. The staff report from the Department of Conservation and Development (“DCD”), for Agenda Item 7a, regarding “Keller Canyon Landfill Land Use Permit Review” for the Planning Commission Meeting held on October 25, 2017 (“October Staff Report”), states that Keller Canyon is currently in compliance with Conditions 6.4, 7.1, as well as all related conditions (6.1, 19.4, etc.). (See, Exhibit D to the October Staff Report.) However, I have not seen any specific reference to the screening of radioactive waste in any of the records or comments presented by DCD or as part of any review of Keller Canyon’s LUP.

I am concerned that Keller Canyon’s radioactive waste screening program, if any exists, is not in writing or has not been presented to County staff for proper evaluation and the facility is therefore in violation of its permit. Equally troubling is that despite the absence of a written program for the screening of radioactive waste, DCD has cleared Keller Canyon as in compliance.

Also, at the May 1, 2018 meeting of the Board, Rick King asserted that Keller Canyon is doing all it can and is going above and beyond what it is required to do to screen for radioactive waste. Mr. King said that it is not required to have radiation monitors by any permit, law or regulation. Actually, Keller Canyon is specifically required to have a plan for screening radioactive waste, as ineligible waste, at the landfill entrance and at the landfill disposal area. This would require the use of radiation detectors as there would be no other way to screen for radiation at any part of the landfill. Keller Canyon apparently has radiation detectors at the entrance, but there has been no mention of radiation monitors at the landfill disposal area. Without any radiation monitors at the disposal area, Keller Canyon is not doing what it is required to do under its permit and is certainly not doing all it can or going above and beyond.

Moreover, it has been reported that the radiation detectors used by Keller Canyon are and have been ineffective at detecting radioactive material from the Hunter’s Point site, as multiple waste loads made it onto the landfill in 2015 and were thereafter *recalled* by the generator *not* rejected by Keller Canyon.

Keller Canyon’s radioactive waste screening program does not meet the requirements of its permit. This is a violation of its permit that could and perhaps should result in revocation, due to the extreme hazard that has been caused.

Furthermore, because this matter involves a violation of Keller Canyon's LUP, it is proper for the DCD to take a lead role in this investigation. After all, Environmental Health has acknowledged a lack of expertise in this arena and there is nothing to indicate that it has any jurisdiction over the disposal of radioactive waste at the landfill. DCD has its own issues with enforcement against Keller Canyon, but, in this situation, it clearly has jurisdiction.

Keller Canyon should pay for the investigation of its acceptance and disposal of material contaminated with radioactive waste

At the public Forum meeting held on June 21, 2018, Supervisor Federal Glover said that he plans to use money from the landfill mitigation fund to pay for the initial steps in this investigation and seek reimbursement from responsible parties later. The Staff Report requests the Board's approval to move forward with that plan.

However, the Staff Report also acknowledges that use of the landfill mitigation funds in this way is not allowed under the mitigation fund use requirements in Condition 35.8 of Keller Canyon's LUP.

As described in further detail above, Keller Canyon's disposal of waste contaminated with radiation is a violation of its LUP. According to Condition 36.16 of Keller Canyon's LUP, the landfill operator is required to provide for costs associated with DCD's monitoring of implementation and compliance with the conditions of approval.

This means that Keller Canyon is responsible for the costs associated with the DCD making sure that the landfill is in compliance with its LUP. This would include the costs of hiring a consultant and performing tests to determine whether the Keller Canyon has accepted and disposed of radioactive material in violation of its LUP. This is the mechanism that should be used to pay for the investigation and eventual remediation.

Of course, we all recognize that Tetra Tech lied to everyone about the cleanup work that it was doing, and as part of the scheme of lying it delivered contaminated material to Keller Canyon. Ultimately, Tetra Tech should pay for its role in this mess, but that is an issue between Keller Canyon and Tetra Tech.

The County has permitted and contracted with Keller Canyon to dispose of certain wastes. Keller Canyon is not cleared from its financial responsibility under its LUP simply because it was lied to. It would be fundamentally unfair to use mitigation funds to cleanup Keller Canyon's mess, especially, when the landfill is required to take financial responsibility.

Keller Canyon's Land Use Permit has to be modified to include explicit radioactive waste detection requirements that are robust and effective, assuming its permit is not revoked

On May 1, 2018, a class-action lawsuit was filed against Tetra Tech, in the California Superior Court of San Francisco County, asserting various acts amounting to fraud, negligence, and other causes of action. A second lawsuit was filed against Tetra Tech on June 15, 2018, also in the California Superior Court of San Francisco, asserting various claims, among other things, for negligent fear of cancer, public nuisance, and strict liability for ultra-hazardous activities. One of the plaintiffs in the latter action has terminal cancer and notes that he expects that his family will file a lawsuit for wrongful death once he has passed. Both complaints include a declaration by Anthony Smith, a Health Physics Specialist (“HP”) that worked on the Hunter’s Point Cleanup project between 2002 and 2012.

According to Mr. Smith, soil that was to be taken off of the Hunter’s Point site passed through a conveyor belt system that scanned the material for radiation. However, at some point the speed of the conveyor had been increased 6 to 9 times the approved speed and the radiation detection alarms had been turned off. The result was that material passed through the system too rapidly for the detectors to make a proper scan and even if something was detected the alarms never sounded.

At some point, these modifications were discovered and previously scanned material that remained onsite was rescanned by hand. However, HP’s were restricted to scanning material within truck trailers. As Mr. Smith explained, the instruments used to detect radiation were not effective beyond about 6 inches. The result was that the scanning of material within truck trailers was not effective.

The consequence of all of this is that soil that was most likely radioactive but labeled as cleared of radioactive contamination made it offsite, traveling through towns, cities, and counties and into landfills or other facilities. This is not necessarily new information, however, Mr. Smith’s narrative paints a picture of how easy it is to prevent the detection of radiation simply by scanning too quickly or from too far away.

Keller Canyon’s radiation monitors were reportedly triggered by a single diaper that had belonged to a child undergoing chemotherapy. Keller Canyon peddles this anecdote to show that its radiation monitors are functional. However, this story raises a more serious question that should be obvious to any parent or anyone that has experience with young children. Specifically, what happened with all of the other diapers? Children of diaper wearing age tend to use more than one in a single day. Are we to believe that a child undergoing chemotherapy used only one diaper and perhaps only received one treatment of radiation? What about other kids that undergo chemotherapy? Are there no other children that wear diapers in the County that have undergone chemotherapy? I sure hope that’s true, but unfortunately it rings as false. It’s good that Keller Canyon caught the one diaper, but what about the rest. How many more radioactive diapers are in the landfill?

Keller Canyon’s efforts, whatever they may actually be, need to be precise and robust in order to overcome the inherent deficiencies of radiation detection. Relying on manifests created in advance and the use of the current radiation detectors is clearly not enough.



Industry standards are not enough in this situation, because Keller Canyon is not an industry standard facility due to its close proximity to residential communities. What's more, Keller Canyon was already told, allegedly, that it was going above and beyond the industry standard and it clearly has not been enough.

The suggestion that dirt at the landfill is shielding the public from radiation is dangerously irresponsible because Keller Canyon has neither been designed nor licensed to contain radioactive material

At the May 1, 2018 meeting of the Board, Rick King suggested that his radiation detectors, at the entrance of the landfill, have detected radioactive material in the past, but may not have detected radioactive material contained in dirt waste loads delivered by Tetra Tech due to the “shielding” provided by the dirt surrounding any radioactive material. Mr. King further suggested that any radioactive material buried in the landfill would also be “shielded” by dirt in the landfill. This concept was also put forth by Dr. Marilyn Underwood, Director of Contra Costa Environmental Health.

Setting aside the fact that Rick King has asserted that the dirt from Hunter's Point was used as daily cover, meaning that it was used to cover garbage at the end of each operating day and therefore stayed on the surface of the landfill at least overnight, the idea that radioactive material contained in waste loads buried at Keller Canyon is “shielded” in any meaningful way by the surrounding dirt would be laughable if it was not so dangerously irresponsible to suggest.

In reality, low-level radioactive waste, such as that found at Hunter's Point, would need to be disposed/contained at a low-level waste disposal facility. Those facilities are licensed by the U.S. Nuclear Regulatory Commission (“NRC”) and specially designed, constructed, and operated to meet safety standards.

To give the Board some understanding about the high standards that are placed on facilities that dispose of low-level radioactive waste, *there are only four active low-level waste disposal facilities in the entire United States*. Keller Canyon is NOT one of those facilities. Dr. Underwood and Rick King have confirmed Keller Canyon's lack of design and licensing for disposal of radioactive waste.

This issue is very serious and must not be downplayed by creating false perceptions of the safety and health risks to the community and environment. Dr. Underwood did explain, to some degree, how loads from the 2015 incident were later screened and the radioactive material contained therein was placed into containers for disposal at a low-level disposal site. It seems that Dr. Underwood has some understanding of the proper disposal requirements for radioactive material

I will also note that the NRC is in the process of conducting a scoping study on the disposal of low-low-level radioactive waste (a subset of low-level radioactive waste) at landfills. However, that study will look at whether this low-low-level radioactive waste can be disposed *inside containers at Hazardous Waste Landfills*. Keller Canyon is NOT a Hazardous Waste Landfill and the radioactive material from Hunters Point was not disposed



in containers at Keller Canyon. Keller Canyon is NOT the proper place for disposal of radioactive material by any stretch of the imagination.

It may be necessary for the Board to make it clear that the most important task at hand is the proper safeguarding of the public health. No one is interested assigning blame. It is far more important to make sure that the radioactive waste is removed to a proper disposal site. Maybe then everyone can start working together without having to worry about covering for past failures.

It is time for the County to grant the City of Pittsburg regulatory authority over Keller Canyon

The underlying issue is not that Keller Canyon is once again failing to comply with its permit requirements and failing to protect the health and safety of the surrounding communities. Keller Canyon has been doing this in one form or another for a very long time now. Not to excuse its conduct, but Keller Canyon is just a business intended to generate profits. Rick King even refers to Keller Canyon as an “asset”. This is a money maker for Republic Services, Inc.

A real problem lies with the regulatory agencies that have neglected for almost 30 years to ensure that the landfill lives up to its many promises and obligations to the public and the environment. The 2015 incident should have been a wakeup call and immediate corrective action in the form of updated and effective practices and procedures should have been implemented and required. Instead, both Keller Canyon and the regulatory agencies simply moved on. Neither the County agencies nor Keller Canyon have discussed any single new procedure or practice that has been implemented at the landfill in response to the lessons learned from the 2015 incident.

Not only were changes not implemented, but no one was told about the occurrence; not even the City of Pittsburg, whose residents are most affected by the operations at Keller Canyon. Not even to Supervisor Glover, in whose District the landfill resides and who is required to be so notified.

Keller Canyon has policies and practices that have allowed radioactive waste onsite. However, the regulatory agencies allowed Keller Canyon to implement those policies and practices and failed to require changes to those policies when they did not work.

Even now, rather than suggest that changes have to be made to Keller Canyon’s radiation screening policies and practices, I have heard nothing more than repeated assertions that the radiation monitors work and are calibrated regularly. It’s great that the radiation monitors work and that they are calibrated, but are they being used properly, are they sensitive enough, do they screen for varying forms of radiation or only one, is something new needed? These are questions that the public is asking and the current regulatory agencies overseeing the landfill are not. They just nod their heads and parrot the line... the detectors are working and calibrated regularly. This is unacceptable behavior.

Regulatory authority over Keller Canyon has to change. The new regulatory agency must be one with an interest in the proper operation of the facility. The City of Pittsburg is the only logical choice. The Board has to make this happen. This issue is no longer only about odors, noise, birds, etc.; It's about early death, distressing illness, and painful treatment. This is a whole new level of suffering inflicted on the people of Pittsburg. Enough is enough. The Board has to solve this problem.

Despite the potential threat to the health and safety of the public, and the Board's interest in this matter, there appears to be a lack of urgency on the part of Environmental Health

I want to express my concern over what appears to be a disorganized and halfhearted investigation effort into this issue. I know that the Board takes this matter very seriously and is eager to address the concerns of the public and the very troubling health risks that are involved. However, so far it seems that the Board's enthusiasm is not being matched out in the field.

At the meeting of the Board held on May 1, 2018, among other things, staff was directed to return to the Board in 30 days with a written report and any updated information. The meeting date deadlines discussed during the May 1st hearing were either May 29th or June 5th. Those dates came and went without any updates from staff.

The public forum meeting held on June 21, 2018 was held with little to no notice to the public. I personally learn about the meeting from a story in the Contra Costa Times (buried on page B-4), less than a week before the meeting date and with barely enough time to adjust my schedule to attend. Other attendees reported far shorter notice.

This is outrageous, inexcusable, and really calls into question the purpose of the public forum meeting. If the point was to communicate with the public, get feedback, answer questions, and address concerns, then why not send notices to affected residents far in advance of the meeting. Staff knows who we are and where to find us. This event seemed more like an attempt to look like the public is being engaged, rather than an attempt to engage the public.

I will also note that at the June 21, 2018 public forum meeting, Dr. Underwood stated that her department will be going back to the Board on July 10, 2018 to provide an update on the investigation. However, Environmental Health's webpage notes that the department was going to provide an update to the Board on June 26, 2018. This could have been a simple mistake; however, it further illustrates that there is a serious problem with communication to the public, which could be seen as an effort to frustrate public participation.

Also, at the June 21, 2018, a member of the public asked Dr. Underwood if she had read the declarations from Hunter's Point whistleblowers and advised her that the declarations contain information indicating that radioactive material made it off of the cleanup site and to local landfills. Dr. Underwood stated that she had not read the declarations but that the consultant, ultimately hired, would read them. This is disturbing news.



It is shocking that Dr. Marilyn Underwood and her department are taking the lead in this investigation and she has not taken the time to read whistleblower declarations that give insight into the handling of the material at issue and give credence to concerns that radioactive waste from Hunter's Point was dumped at Keller Canyon Landfill. Dr. Underwood is either too busy to give this investigation the attention it deserves or she is uninterested.

This is a very serious public health and safety issue and it must be treated as such. If Dr. Underwood cannot find the time to read up on the facts of the case or provide notice to affected members of the public, the Board should consider whether Environmental Health is really the best choice for looking into this matter. As described in my comments above, DCD has jurisdiction over the acceptance and disposal of radioactive waste at the landfill, under Keller Canyon's LUP, and the City of Pittsburg is very interested in protecting the health and safety of its residents.

I look forward to hearing the Board discuss and resolve these issues. Thank you for taking to time to consider my comments.

Sincerely,

Lisa Della Rocca

Stakeholder Resident of Pittsburg