



**Contra  
Costa  
County**

To: Board of Supervisors

From: John Kopchik, Director, Conservation & Development Department

Date: December 20, 2016

Subject: Keller Canyon Landfill Future Compliance with "Direct Haul" Conditions of Approval

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**RECOMMENDATION(S):**

CONSIDER accepting a report regarding the Keller Canyon Landfill (KCL) operator's future compliance with the "Direct Haul" conditions of approval associated with the landfill's approved land use permit.

**FISCAL IMPACT:**

There is no fiscal impact to the County General Fund for preparing or accepting this report. Keller Canyon Landfill Company, the landfill operator, is responsible for providing reimbursement for the County's staff costs associated with the preparation of this report (100% landfill operator fees).

**BACKGROUND:**

At the November 1, 2016, meeting of the Board of Supervisors (agenda item D.6), Department of Conservation and Development (DCD) staff presented the second Keller Canyon Landfill (KCL) land use permit (LUP) review report as recommended by the County Planning Commission (CPC) in October 2016. The Board was asked to accept the recommended permit review report which concluded that no new or modified conditions of approval were needed. After staff's presentation, several interested parties commented on

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☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **12/20/2016** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I  
Supervisor  
Candace Andersen, District II  
Supervisor  
Mary N. Piepho, District III  
Supervisor  
Karen Mitchoff, District IV  
Supervisor

ABSENT: Federal D. Glover, District V  
Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: December 20, 2016

David Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: David Brockbank  
(925)674-7794

cc:

the permit review report or on the landfill in general.

A recurring theme in the comments raised by interested parties during the second permit review hearings before the CPC and the Board pertained to several of the new conditions of approval anticipated to take effect on March 22, 2017, following the Board's approval of the first permit review in September 2015. The Board's final action on that first permit review and public hearing process added five new conditions of approval and modified 82 of the original conditions. Four of the five new conditions that were added limit the direct haul of materials that would be potentially recovered if first delivered to a transfer station in accordance with previously approved Board policy that had not been formally integrated into the LUP. These new conditions and the companion modification of condition 8.1(b) will primarily impact acceptance of loads containing mixed Construction and Demolition (C&D) material. The 82 modified conditions as well as one of the new conditions took effect at the time they were approved. However, the Board's final approval allowed a grace period of 18 months for the four new "Direct Haul" conditions to take effect following the September 22, 2015 hearing.

As a result of the public hearing testimonies and discussion between staff and members of the Board on November 1, 2016, Board members wanted to know what steps were being

taken by the landfill operator in order to comply with the new “Direct Haul” conditions. Specifically, the Board was interested in understanding what actions the County and landfill operator would need to take in order to facilitate and achieve timely compliance with the new conditions of approval. As a result of this discussion, the Board requested that DCD staff prepare a follow-up report by the end of this calendar year about what has been done or is planned to occur to prepare for the new “Direct Haul” conditions taking effect in March 2017.

## BACKGROUND: (CONT'D)

### New “Direct Haul” Conditions

The first two new “Direct Haul” conditions, 8.5 and 8.6 identify the types of material(s) that may be directly hauled to the landfill for disposal and the procedures for screening eligibility and processing those loads. The other two “Direct Haul” conditions, 8.7 and 8.8 describe the requirements for generating quarterly reports and procedures for allowing emergency direct haul loads in the event of a natural disaster or other similar emergency. The four new “Direct Haul” conditions that will take effect on March 22, 2017 are attached as Exhibit A. It is worth noting that Condition 8.1(b) pertaining to C&D waste hauling vehicles was modified in 2015 linking it to the new “Direct Haul” conditions.

A number of factors (only some of which are facility specific) dictate whether loads are sorted or processed to divert recoverable materials and which waste types each local transfer station chooses to recover from incoming loads prior to transferring remaining waste to a landfill for disposal. These factors include but are certainly not limited to recycling markets, regulatory requirements, certification standards, processing capacity and technological advancements. Each of these factors have and will continue to change over time and some factors, like recycling markets, are subject to frequent and potentially substantive changes tied to fluctuating supply and demand as well as volatile shifts in commodity values. The new “Direct Haul” conditions were designed with these factors in mind and provide a means to address the changing nature of the materials that are actively being recovered from loads accepted at local transfer stations on an annual basis without having to modify the conditions themselves.

Condition 8.5 requires the landfill operator to submit a list of waste and material types that would be recycled or otherwise diverted from disposal if processed through local transfer stations (hereafter referred to as the Annual Ineligible List for Direct Haul or Ineligible List). To address the above described changes in transfer station recovery operations over time, the new “direct haul” conditions are designed around this Ineligible List which must be updated at least once a year. The Annual Ineligible Lists submitted by KCL are subject to the review and approval of DCD. This Ineligible List will delineate which types of wastes/materials are not allowed to be directly hauled to the landfill for disposal and is intended to be used by the operator when determining direct haul eligibility. However, this Annual Ineligible List is not intended to apply to loads containing materials that would be used as cover or otherwise beneficially reused on-site as long as such materials are treated as diversion under the Integrated Waste Management Act (e.g. concrete). In other words the landfill is allowed to continue accepting direct haul loads of cover/beneficial reuse materials whether or not the materials would be recovered at local transfer stations.

Condition 8.6 identifies the screening procedures to be conducted by the landfill operator prior to accepting direct haul waste/material loads. The landfill operator is required to

document specific details in writing during the screening process to substantiate direct haul eligibility determinations. The procedures will necessitate that the operator implement a number of changes ranging from preparing and maintaining additional load specific documentation to gathering information from direct haul customer's describing their in-house material handling/prescreening processes(e.g. waste reduction and recycling, testing/sampling).

Condition 8.7 requires the operator to submit quarterly reports which must contain waste types and a number of other details about direct haul loads accepted for disposal. In conjunction with these quarterly reports, the summarized results of all direct haul eligibility screening conducted by the operator is also required to be submitted.

### **Facilitating Timely Condition of Approval Compliance**

Staff and the landfill operator have identified the following actions that would need to be completed in advance of the new "Direct Haul" conditions taking effect.

Actions Required Prior to March 22, 2017 – There are only a couple of preparatory actions that need to be completed ahead of time in order to enable the landfill operator to comply with the new “Direct Haul” conditions when they take effect in March 2017. These actions include establishing the first approved Annual Ineligible List for Direct Haul and notifying customers about certain landfill requirements.

There are a limited number of customer notification requirements in the new “Direct Haul” conditions. Specifically, the operator is required to ensure that they have the following information on-hand by March 22, 2017 to ensure that new customers receive the following information prior to gaining access to the site:

1. Requirements of Keller Canyon Landfill Company describing contract for landfill use, rules and regulations of the landfill (e.g. on-site speed limit), prescribed haul route, load inspection program, driver training program, and any other such information as required.
2. Requirements for proper load covering or containerization and consequences for non-compliance specified in Condition 7.2.

While account customers may be contacted directly, the landfill operator does not have contact information for those customers that do not have accounts which pay at the time of disposal. Therefore, the primary customer notification method used by KCL is disseminating verbal or written information to customers at the landfill scale house when they conduct transactions for incoming loads. Advance dissemination of any required information would most likely occur in late February or early March because the operator has found that it is best to notify customers roughly 15-30 days prior to new regulations or procedures taking effect.

Based on discussions with the landfill operator, staff has identified an approximate date

range of 45-50 days prior to the “Direct Haul” conditions taking effect for the landfill operator to begin developing the initial Ineligible List so that it can be reviewed and approved in time for its use on March 22, 2017. The landfill operator estimates it may take up to 30-days to develop the initial Ineligible List. Staff believes it may take an additional three weeks for DCD to review, modify as needed and ultimately approve the initial Ineligible List to be used for determining which waste loads are eligible for acceptance and disposal if hauled directly to the landfill.

Additional Actions That May Be Taken Prior to March 22, 2017– Although not required, the landfill operator is considering providing customers with advance notice of the impending change in direct haul eligibility. If such notice is provided, the landfill operator will do so about two weeks in advance. Direct contact by phone or mail are the most likely methods to be used to notify account customers known to direct haul loads of wastes likely to be on the Annual Ineligible List (most notably mixed construction and demolition debris). However, scale house based notification methods would be used if the operator elects to provide advance notice to any customers without accounts (also called cash or one-time customers).

## **Achieving and Maintaining Compliance**

One of the new mandatory direct haul screening procedures requires the operator to confirm in writing that the waste/material types in accepted direct haul loads are not on the Ineligible List as part of the load checking program/process. The load checking program already being implemented by the landfill operator necessitates that incoming loads be visually inspected to avoid acceptance and disposal of unallowable wastes, such as those classified as hazardous. Visual inspections needed to confirm vehicle type eligibility can readily be conducted at the scale house quite effectively. However, restricted visibility of what each incoming load contains limits the effectiveness of any load inspection conducted at the scale house and this is especially true for loads containing mixed waste, including mixed C&D waste. Therefore, in order to ensure the effectiveness of load screening conducted at a landfill it is critical that waste types be inspected to verify eligibility for disposal as they are being unloaded at the landfill’s active working face. Minimal changes are likely to be needed to adapt KCL’s load checking program to address the requirements in the new “Direct Haul” conditions.

If unallowable waste loads arrive at the landfill, the existing practice is to refuse acceptance and explain why to ensure the customer understands so that similar occurrences can be avoided in the future. The Load Inspection conditions of approval (7.1 and 7.2) require the operator to keep a log of customers attempting to bring ineligible wastes to the landfill, pursuant to Eligible Vehicle and Loads Program.

Supplemental notification should be provided at the scale house as warranted when customers attempt to direct haul ineligible waste loads to the landfill for disposal. Such notifications could include one or more of the following:

1. Provide a written notice to those customers (explaining the acceptable waste types

- and / or where to take existing load),
2. Verbally direct customer(s) to take the load to a transfer station.
  3. Post signage at the scale house indicating acceptable waste material types.

While the new “Direct Haul” conditions do not require the customer notification processes or methods provided above, implementing such methods would minimize the amount of customers attempting to direct haul ineligible waste loads for disposal after March 22, 2017.

The landfill operator is required to use the standardized computer system for waste tracking purposes. Unfortunately, that system mandates use of general waste types for mixed C&D waste loads which don’t provide for differentiating between recoverable and non-recoverable C&D wastes (unless the load solely contains a single source-separated materials type like concrete or dirt). Therefore, the operator will need to update waste acceptance procedures to require that the supplemental documentation called for to document results of direct haul screening be generated or gathered on an on-going basis.

## **Monitoring**

Staff expects to monitor implementation of the new “Direct Haul” conditions using a combination of written documentation and on-site inspections. Staff anticipates the need to conduct more on-site inspections during the initial transition as the operator and customers address potential confusion or refine procedures.

When conducting on-site inspections DCD staff will monitor activities occurring at the scale house as well as the active working face. Staff will be prepared to gather photographic evidence when conducting on-site monitoring as circumstances warrant, for the purpose of documenting any areas of concern that may be observed (e.g. disposal of direct haul loads containing waste type(s) on the Annual Ineligible List).

Scale House – As each incoming load arrives, staff would seek to confirm the adequacy of information disseminated to customers. Additionally, staff would observe incoming loads for the purpose of confirming whether KCL refuses to accept direct haul waste loads readily identifiable as being ineligible for disposal. As noted above, limited visibility of wastes contained in incoming loads can compromise the effectiveness of scale house load inspections.

Working Face- As each direct haul load that is accepted for disposal, is being unloaded, staff would also monitor the waste type(s) being tipped at the active working face as they will be more readily visible. Staff will be watching for any direct haul loads containing a majority of waste types listed on the Ineligible List, noting what the remaining types of waste are and any other noteworthy details that may be helpful in identifying and addressing potential causal factors to avoid similar occurrences in the future.

## **Enforcement Options Available to Address Non-Compliance**

Staff will seek to gather any evidence demonstrating the operator's non-compliance with these new conditions, which may include reporting data, documentation called for by the new conditions as well as photos taken during inspections. Initially, staff would work with the operator seek timely remedy of violations through implementation of appropriate corrective actions. However, where such proves to be ineffective, staff would rely on evidence to pursue appropriate enforcement action(s) accordingly. The enforcement options provided for in the LUP, Franchise Agreement and County Code are summarized below.

### Land Use Permit

Condition 3.4 requires the landfill operator to comply with the provisions and requirements of its Land Use Permit (County File #LP2020-89). It further specifies that a violation of any of these conditions may be cause for revocation of the LUP, pursuant to County Code Section 418-4.020, following reasonable written notice. Alternatively, the condition notes that the County has the option of issuing formal notices and assessing penalties.

Pursuant to County Code section 26-2.2028(b), the County Planning Agency (DCD) may take one or more actions depending on the nature, severity, and frequency of conditional use permit violations. The Code Section lists seven actions the County may take, four of which are listed below:

1. Modification of permit terms, limitations, or conditions;
2. Specification of a probationary period to correct permit violations;
3. Permit Suspension – the use authorized shall cease for the term of suspension and each day the use continues during the suspension period, is a separate code violation; and
4. Permit Revocation – the use shall terminate. Each day use continues after termination, is a separate violation.

### Franchise Agreement

**Section 4.19 – *Penalty Schedule for Noncompliance.*** Director may impose (monetary) penalties after providing the Operator with three days' notice of noncompliance with any condition or provision of Franchise Agreement, or any applicable Permits or Regulatory Agency "requirements" are determined by the County. The following CPI adjusted penalties can be imposed if the operator is not "diligently" pursuing the required corrective actions:

\$936.61 per day in first week of noncompliance  
\$1404.92 per day in second week of noncompliance  
\$1,873.22 per day in third week of noncompliance  
\$2,341.53 per day thereafter.

The landfill operator has the right to arbitrate any action taken by the County in accordance with Section 13.8 – Arbitration, of the Franchise Agreement. Depending on the outcome of any arbitration, that decision may be appealed.

**Section 11.1 – Failure to Prosecute Work.** To remedy actions or inactions which constitute default on the part of the Contractor, the County may take such actions as provided in law, including seeking monetary damages or termination of the Landfill Franchise Agreement. Such remedies may only be sought if the operator fails to take specified corrective action(s) within 30 days of the County’s issuance of the required first and second notices.

CONSEQUENCE OF NEGATIVE ACTION:

None.

CHILDREN'S IMPACT STATEMENT:

Not Applicable.

CLERK'S ADDENDUM

***Speakers: Dana Dean; Evan Edgar; Rosa Fallon, resident of Pittsburg; Jennette Borcic, resident of Pittsburg (handout attached) ; David Frasier, Chief of Staff for Supervisor Glover, read a letter to the Board into the record (attached).***

ATTACHMENTS

Exhibit A - Direct Haul Conditions of KCL Land Use Permit