



**MINUTES OF THE APRIL 5, 2019
SPECIAL MEETING OF THE BOARD OF DIRECTORS**

1. CALL TO ORDER

The Upper Valley Waste Management Agency met in special session on Monday, April 5, 2019 at 1:30 p.m. at the Yountville Town Council Chambers. Chair Mohler called the meeting to order at 1:30 p.m.

2. ROLL CALL

The following members were present: Chair Mohler, Member Koberstein, Member Canning, Member Dillon, and Vice Chair Pedroza.

3. PLEDGE OF ALLEGIANCE

Chair Mohler led in the Pledge of Allegiance.

4. PUBLIC COMMENT

During this period, anyone who wishes to speak to the Authority Board of Directors regarding any subject over which the Board has jurisdiction that is not on the agenda or to request consideration to place an item on a future Board agenda, may do so at this time. Individuals will be limited to a three-minute presentation.

THE BOARD OF DIRECTORS WILL TAKE NO ACTION AS A RESULT OF ANY ITEM PRESENTED AT THIS TIME.

None

5. CONSENT CALENDAR ITEMS

A. Approval of Minutes

Staff requested approval of the April 1, 2019 special meeting minutes.

Approved Consent Calendar item 5A: AP, CC, MM, DD, MK

6. ADMINISTRATIVE ITEMS

A. Discussion on Notices of Violation at the Clover Flat Landfill

Napa County's Local Enforcement Agency (LEA), Peter Ex, provided an update on the status of corrective actions requested by the LEA and other regulatory entities to the Company. Peter also reported on results of sampling and monitoring activities.

Peter Ex reported that last week (Tuesday, March 26th) the LEA jointly with the Regional Water Quality Control Board (RWQCB) performed an inspection at the Clover Flat Landfill regarding leachate possibly being discharged into the nearby unnamed creek which eventually discharges to the Napa River. Findings confirmed the presence of leachate seepage and problems with the leachate collection system that was allowing leachate to flow down the hillside towards the creek. There was also black oily water that most likely was leachate also flowing directly into the creek. In addition, the Operator had routed a storm water pipe from the upper slopes of the active landfill area all the way down into the creek. There were several issues with the leachate collection system, which the RWQCB made the Operator aware of. Summary of the discussion that day with the Operator was to immediately remove the pipe from the creek discharging storm water and they also needed to immediately cut off any further leachate from entering the creek. On Thursday, March 28th jointly with the LEA, RWQCB and California Department of Fish & Wildlife (DF&W) conducted another inspection. At that time the Operator had not removed the pipe from the creek. There was observed leachate still entering the creek. LEA directed company to immediately make these corrective actions. On Friday (March 29th) LEA issued a Notice of Order, which specified a series of deadlines for certain corrective actions. Public access was closed at this time due to potential of public exposure due to the leachate, until the Company corrected these issues at hand. On Tuesday (April 2nd) at 5:00pm the Operator was to have met these corrective actions. Those included stopping all leachate from entering the creek; removal of the black storm water pipe; covering areas of the landfill with insufficient cover with intermediate cover and approved soil; all suspected sources of leachate were to be identify and marked on a site plan provided. The Operator was also directed to maintain a log of all leachate collected, stored, amounts of leachate pumped and any transported off-site. Also to provide a plan to implement measures to prevent immediate erosion control on the eastern slopes of the landfill and officially manage storm water on-site and was directed to hire a permanent Facility Manager.

As of inspection on Tuesday afternoon (April 2nd) the Operator had constructed an earthen berm and sump pump but leachate was still visible and the pump was not actually pumping. The black pipe had been removed. Most of the areas with insufficient intermediate cover had been covered with soil, although there are still some areas that did require approved soil. Operator has provided LEA with a map of all suspected locations of leachate seepage but a new location was identified at this time. Operator has implemented daily tracking of all leachate storage and collection. Company to provide a plan to employ measures to prevent further erosion and storm water runoff. Bryce Howard has identified himself as the new Site (Facility) Manager, at least until another can be permanently hired. On Thursday, there was another inspection with the RWQCB and DF&W, and numerous samples upstream and downstream from the creek were collected. Not sure when the sample results will come back. The LEA issued a follow-up letter to the Operator on Thursday, stating there was still leachate observed entering the creek; therefore, failing to address the leachate issue. Operator provided erosion storm water control plan that LEA believed was insufficient and did not address the immediate issue or provide corrective action. LEA was also concerned with the Operator's proposed plan to use a catch basin as a collection pond. While on site (delivering the letter) there was another inspection with Bryce (Site Manager) and noticed they had improved the leachate control method and noticed no leachate was entering the creek at that time (possibly due to lack of rain) but did address the concern that the current liner was very thin, with visible holes in it and LEA staff believed it was not sufficient to prevent future leachate if rain returned. Newly graded area where they placed a new culvert directly into the creek but there were no straw waddles placed to prevent erosion from getting into the creek. That was the status as of yesterday afternoon (Thursday).

Manager Lederer asked LEA to confirm that currently there is no visible leachate leaking into the creek; LEA confirmed this but not satisfied the conditions on the ground would prevent leachate from entering the creek in the future. Peter responded he did suggest finding an impervious liner and suggested possibly moving the berm to collect leachate flow, damming the upper slope so leachate can go towards basin, rather than down the hill where the culvert would drain. Also asked Bryce how does the Company know what is not clean water and how to separate flow from storm water?

Member Canning asked if anyone has inspected site with today's morning rain?

Peter responded, no.

Chair Mohler asked about the recent water samples taken and asked for those results.

Peter confirmed results for the samples taken last week were in but he has not reviewed them yet. The other agency samples will take a bit longer.

Chair Mohler also asked LEA for a summary on what continued closure to the public versus full closure looked like.

The LEA responded they will continue to work with the Company on drastic improvements addressing the LEA's concerns. The leachate going into the creek is the current main concern. LEA is looking for the Company to implement measures to prevent further issues from worsening. LEA has asked Company for plans on how they will accomplish these measures. The Notice of Order will be effective April 16th at that point LEA will have more authority to push for a full closure scenario. LEA still hopeful Operator will address all issues at hand and LEA will continue to make determinations as they move forward.

Company's Bryce Howard, as Acting Site Manager, presented slides (including areal pictures) of the Clover Flat Landfill and discussed corrective actions taken addressing issues in the Notice of Violation and summarized by the LEA. Bryce also wanted to mention that on Tuesday, together with the RWQCB and DF&W, they extensively walked along the creek looking for additional areas of concern and unless they hear differently assumes there are no new leachate issues. Discussed four areas where there was leachate coming out of the landfill and a collection system that was also spilling over causing a source of leachate. As of Monday, he feels those have been corrected. As of today only one of the three is still being addressed and not yet corrected but hopeful the temporary fix is sufficient.

Member Canning asked how confident Company was of the current liner cover being used (two sheets of 10 mil thickness each) and the finding of a tear in one of the current layers? He also asked if 40mil is the industry standard or the best practice requirement?

Company responds these requirements depend on several conditions and would require 40-60mil but 60mil is very stiff and not practical.

Chair Mohler asked Bryce to talk about the transportation of leachate via Biagi Brothers and what kinds of sampling were done.

Bryce asked JC Isham (company consultant) to join him in addressing this question. Some sampling has been returned and preliminary feedback suggests that East Bay MUD will reject the collected leachate based on the sample results. Possibly need to resample each tank. Still waiting on East Bay Mud to also give Company some options. Short term solution is adding tanks until the rain stops. Two additional options allowed by the RWQCB is to use the leachate for dust control but also (although never used) can recirculate the leachate.

Manager Lederer asks Bryce, what does operation look like since Landfill is closed to the public?

Bryce confirmed there are numerous calls into the company from concerned citizens asking what is going on. The perception from the public is the company is completely out of business. However, they still get around 100 customers a day that are turned away. Citizens are directed to Devlin Road Transfer Station.

LEA looks forward to addressing these issues and asking for a plan that mitigates these issues. In response to public risks and public closure the LEA has directed the commercial haulers to only dispose of at the active face of the landfill due to safety concerns.

PBES Director David Morrison confirmed the effective deadline is April 15th (for compliance) but since date falls on a Sunday, the deadline is moved to April 16th. At that time the PBES Director will be looking to see if flow of leachate has been completely halted and that there is some kind of plan or progress being made in disposing of the leachate. Adding tanks is an interim measure not a permanent fix. Director will also want to make sure these tanks are not leaking in any way. If there is satisfaction on those two issues, then LEA can continue to work with the Operator past the April 16th date. After this date the LEA will have the Authority for full closure. Waiting to see how applicant responds in the next week.

Chair Mohler asks if there is the possibility the Company will be reopened to the public by this date?

David Morrison responds, yes, if Operator comes up with a plan that would be satisfactory to LEA staff, that explains how they will open to the public without creating risks but until then it will remain closed to the public.

Member Koberstein asks how the various agencies interact with each other. Is there a coordination or does each entity do things separately?

David Morrison explains there is a coordination and communication by the different agencies. As Peter explained in these past inspections, many of which have been joint inspections. Regional Board has already issued a notice and following that up with an abatement order. They have separate enforcement authority. DF&W has been in discussions with the District Attorney about pursuing charges but no charges have been filed. Each agency has its own enforcement ability and also separate fines and penalties. Certainly sharing information to obtain the complete picture of the situation and to avoid providing contradictory direction to the Operator and to coordinate there is a consistent enforcement message across the agencies.

Member Canning asked for confirmation from Company's Evan Edgar and JC Isham that they are feeling properly resourced and fully supported by the Company. Both responded with a yes.

Public Comment: Geoff Ellsworth, Mayor of St. Helena is interested in a coordinated and consistent messaging going out to the public, like with these press releases. He has received many concerned calls and emails from constituents about drinking water and wells. He is interested in having a clear notice go out as soon as possible and have it cover concerns that have come up to rest people's fears.

Member Canning echo's Mayor Ellsworth comment as he has also heard from many via text, email, and in person. He also asks the County if there is a coordinated effort in the works to put out this press release or statement?

David Morrison explains these concerns have been accounted for and they are working them into a revised and

expanded public notice. These Health Advisory notices come, not from the LEA but from the Public Health Officer, Dr. Karen Relucio. LEA has identified that water course discovered this morning or yesterday and had previously described it as a tributary of Dutch Henry Creek but after further mapping it is a separate tributary of Dutch Henry Creek that flows through a series of channels into the Napa River and does not connect with Dutch Henry Creek. It does not change the property owners contacted in the past. Not aware of any domestic water systems that pull surface water from that tributary. Looking today at mapping the wells that are used for domestic use and close to the creek, then followed up with those land owners. Currently working with Dr. Relucio on a press release to avoid public misconception. Still waiting to receive that notice.

Member Canning reiterated there was expressed concern on Monday and it was important to get information out to the public immediately. We are imposing a severe sense of urgency to the Company and we also have a responsibility and urgency to communicate to the public. Previous press release (sent out Friday) did not address the drinking water concern. Hoping second press release clarifies and addresses these new concerns.

Chair Mohler did agree another press release was critical to keep the public informed on what is going on.

Geoff Ellsworth added with the past incidents this should be an opportunity to improve the dialogue between the Cities and County and for the Operators to get through this. In the future, we can be more involved or engaged as a community.

B. Discussion on Imposing Penalties

Chair Mohler, on behalf of the entire Board, strongly encourage the Company to continue to focus all efforts on meeting all regulatory requirements of all the regulatory agencies involved.

C. Update from Ad Hoc Committee

Member Koberstein gave a report on the Ad Hoc Committee's last few meetings. Committee has met with the Company to talk about the form of the contract. At this point the Committee recommends authorizing Agency Manager to negotiate a short term contract with an experienced (in the field) legal consulting firm to review current contract form and ask consultant to offer suggestions to the board on improvements. Company by the name of Koletano Isman (sp?) expressed interests.

Agency Manger confirmed Boards goal is to have outside counsel review current contract (with notes on current suggested changes), and to give this board broad suggestions. Afterwards, County's Counsel and Agency Manager would draft contract language to include scope of work and rates then bring back to the board. Limit would be \$10,000 or less for counsel retention.

Member Dillon suggests Napa County's practice of looking at three (3) firms before selecting one, rather than just choosing one.

Agency Manger mentioned there is no requirement to go out for an RFQ. If Board chooses to go the RFQ route, could have draft contract back in May. If Board chooses to use this one firm (after qualification review), could return draft contract back in April.

7. FRANCHISES' BUSINESS ITEMS

None

8. OTHER BUSINESS ITEMS

A. Manager's Report

Nothing to report

B. Closed Session

The Board met in closed session with Agency Counsel regarding potential initiation of litigation pursuant to Government Code Section 54956.9 (d)(4).

The following reportable action was taken: the Board found Clover Flat Landfill (CFL) to have committed one or more major breaches of its Franchise Agreement with the Agency, specifically with respect to CFL's duty to observe and comply with all applicable Federal, State and Local laws, regulations and codes. The Board decided

and directed staff to issue a letter giving CFL notice of default under the Franchise Agreement, stating the grounds for such declaration of default. As noted during the meeting and to be noted in the notice of default. CFL has the right under the contract to cure the breach within the time period to be stated in the notice.

9. ADJOURNMENT

Meeting was adjourned at 3:12 p.m. The next scheduled special meeting of the Agency Board of Directors will be held on Monday, April 22, 2019 at 1:30 p.m. in the Yountville Town Council Meeting Chambers.

AYES: _____
NOES: _____
ABSTAIN(A): _____
ABSENT(B): _____
EXCUSED(X): _____

By: _____
ATTEST: Steven Lederer, Manager of the Upper Valley Waste Management Agency

KEY

Vote: AP = Alfredo Pedroza; CC = Chris Canning; DD = Diane Dillon; MK = Mary Koberstein; MM = Margie Mohler
BW = Brad Wagenknecht; GE = Geoff Ellsworth; GK = Gary Kraus; KD = Kerri Dorman
The maker of the motion and second are reflected respectively in the order of the recorded vote.
Notations next to vote: Y = Ayes; N = No; A = Abstain; B = Absent; X = Excused