



Upper Valley Waste Management Agency Board Agenda Letter

TO: Board of Directors

FROM: Steven Lederer - Manager
Upper Valley Waste Management Agency

REPORT BY: Steven Lederer, Director, Public Works - 259-8228

SUBJECT: Consideration of resolution withdrawing notice of breach of contract by Clover Flat Landfill Inc.

RECOMMENDATION

Agency Manager requests consideration of adoption of a resolution to withdraw the Notice of Breach of Contract issued on April 9, 2019 to Clover Flat Landfill, Inc.

EXECUTIVE SUMMARY

On April 5, 2019, the UVA Board of Directors found Clover Flat Landfill, Inc. ("CFL") in breach of its franchise agreement due to various violations found at the landfill. Accordingly, the Agency issued a Notice of Breach of Contract to CFL on April 9, 2019. The Board was provided regular updates on the Company's progress in resolving these issues, primarily related to leachate management and establishing an adequate fire control system. At the Board's regular meeting on October 21, 2019, the Board heard an update from the Company and the Local Enforcement Agency (LEA), indicating among other things that the LEA has entered into a stipulation with CFL recognizing substantial compliance and cure of the previously declared violations, that the leachate issues have been resolved and that new fire control system had been installed. While the fire suppression system is considered temporary, in that a permanent system is still needed, the temporary system does meet County Code and the Napa County Fire Chief has confirmed he has no objection to dropping the "breach" so long as the permanent system is in place by May of 2020.

At the October 21 meeting, the Board requested this special meeting and agenda item to make a formal decision as to whether the breach has been substantially cured, and requested that the action to be considered would be adoption of a resolution withdrawing the April 9, 2019 Notice of Breach so that CFL would have a formal document memorializing the Board's action.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?

No

County Strategic Plan pillar addressed:

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

On April 5, 2019, the Board found CFL to be in breach of its Franchise Agreement due to various regulatory violations that had been declared by the Local Enforcement Agency (LEA) and the Napa County Fire Department regarding occurrences and conditions at the landfill. Based on that finding, the Agency issued a Notice of Breach of Contract to CFL on April 9, 2019, with a detailed description of violations, which gave CFL six months in which to cure the breaches. During the past six months, the Board has received regular updates and reports from CFL, the Fire Department, and the Local Enforcement Agency (LEA) regarding the progress made by CFL in correcting the violations and coming into compliance with regulatory requirements.

The following report was provided by Peter Ex, the LEA representative, at the Agency Board meeting of October 21, 2019:

"On Tuesday October 15th, the LEA conducted a joint compliance inspection with representatives from Napa County Engineering Division, the Regional Water Quality Control Board (RWQCB), Dept. of Fish and Wildlife, and Clover Flat Landfill staff and consultants. The facility continues to comply with all State Minimum Standards and appears well prepared for the upcoming winter season as it pertains to landfill operations. Winter erosion control measures are largely in place except for a few minor areas to be completed in the next couple of weeks. Napa County Engineering will reinspect upon completion. An interim leachate management plan has been submitted to the LEA and RWQCB which proposes the use of frac tanks in strategic locations and establishes hauling and disposal contracts for an estimated 2 million gallons of leachate. CFL has submitted a Major Mod Use Permit to expand the Solid Waste Facility Boundary to the northern property line incorporating all operational areas into the LEA authority, and open the facility to the public on Mondays. The radioactive tanks remain onsite and are stored away from public access areas. CFL staff stated the radioactive tanks would be removed from the site by the end of the year."

Mr. Ex also reported at the meeting that the LEA and CFL had entered into a stipulation recognizing CFL's substantial compliance with the LEA's requirements and previous terms of notices and orders issued by the LEA..

The following written statement was received from Napa County Fire Chief Geoff Belyea:

"My understanding is that CFL is in compliance with all the FD requirements except the installation of the permanent fire suppression system. I am ok with the request for the extension until May 2020 to allow your client time to complete the fire suppression infrastructure improvements. However, as you are probably well aware of, fires are a highly sensitive topic within the County and therefore I can not support any additional extensions beyond May 2020."

CFL requested, in the attached letter, that the Agency Board withdraw the Agency's Notice of Breach. CFL indicates that this would be useful in obtaining financing of some of the improvements that are underway. It should be noted that if any remaining steps are not taken in a timely manner by CFL to come into full compliance with all regulatory requirements, the Agency may once again declare CFL to be in breach of contract. The requested action is being

done without prejudice to the authority of the Agency to do so. Staff recommends that, since CFL has made good progress under new management, and has demonstrated substantial compliance to the LEA and to the Fire Department, the Board adopt the proposed resolution to withdraw the April 9, 2019 Notice of Breach of Contract.

SUPPORTING DOCUMENTS

A . CFL Ltr. Requesting Cure of Breach

B . Resolution

Recommendation: Approve

Reviewed By: Alice Ramirez