

A LANDFILL THAT REFUSED TO DIE

May 1, 2013

SUMMARY

The City of Ukiah landfill located on Vichy Springs Road stopped receiving refuse in September 2001. The law requires the landfill be capped and permanently closed within two years. It has been twelve years and the landfill is not capped, not permanently closed nor has the post maintenance plan been submitted for approval.

This noncompliance with health and safety requirements for proper containment of landfill waste may result in severe consequences such as fines and constructive orders.

The landfill straddles an earthquake zone, a local watershed and two creeks that feed into the Russian river.

The Grand Jury (GJ) finds that insufficient effort has been taken by the City of Ukiah to affect the proper permanent closure of the landfill.

The GJ strongly recommends the City of Ukiah take all necessary actions to meet their overdue legal obligations to permanently close the landfill before the State penalizes the City through constructive orders, fines, and penalties.

GLOSSARY

Leachate: The chemical liquid runoff of stored waste that is collected and processed to prevent contamination of surface and ground water.

Prescriptive Cover: Clay cap or geo-synthetic cover to permanently seal the landfill. The cap or cover is then covered with soil and vegetation.

Landfill Gas (LFG): Volatile chemical gaseous waste from stored refuse.

CalRecycle: Formerly the California Integrated Waste Management Board, the State monitoring agency in charge of landfill regulations.

North Coast Regional Water Quality Control Board (Water Board): The State agency responsible for monitoring the quality of water.

LEA: Local (County) Enforcement Agency representing the California Environmental Health Department.

Constructive Orders: Demands from regulatory agencies.

Inventory of Solid Waste Facilities which Violate State Minimum Standards: Inventory list of solid waste facilities in the State of California that are violating the State Minimum Standards for solid waste handling and disposal.

BACKGROUND

During the process of reviewing the 2011-2012 GJ report on the City of Ukiah's refuse contract, the 2012-2013 GJ became aware of the added gate fee to maintain the city's previous landfill. The Ukiah Solid Waste site was opened in 1954, and is located off Vichy Springs Road, three miles east of Ukiah. The landfill has not accepted refuse since September in 2001 but has not been permanently closed. This is a violation of State regulations, Title 27, California Code of Regulations §21110-Time Frame for Closure. The CalRecycle regulation requires permanent closure of the site within two years. CalRecycle, LEA, and the Water Board are the agencies charged with enforcement procedures and authority to assess penalties, according to Public Resources Codes §45000 and §45023.

APPROACH

The GJ interviewed City Public Works, County and State management and regulatory staff. Federal and State regulations regarding landfills and water quality, communications between regulatory agencies, and the 2012-2013 City of Ukiah budget were reviewed.

DISCUSSION

The City of Ukiah does not have approved final closure and post closure maintenance plans as required by California Code of Regulations (CCR), Title 27, §21780 and §21110.

In August 1999 the City of Ukiah submitted a Final Closure and Post-Closure Maintenance Plan to LEA, the Water Board and CalReCycle for approval. Three months later on November 23, 1999, CalReCycle and the Water Board responded with comments. On May 5, 2000, the City of Ukiah submitted a revised plan, the Joint Technical Document (JTD) and in August 2000, the city revised the plan, and in December 2000, the Water Board and Cal-Recycle provided comments, and for the next eight years comments and revisions went back and forth with the city missing important deadlines.

In a CalRecycle memo, dated February 3, 2011, (Disposal Facility Inspection Report) to the LEA (Title 27 CCR §21110, Titled Time Frame for Closure), requires the City of Ukiah to begin implementation of the approved closure plan schedule within 30 days of receipt of the final acceptance of waste. The city received two extensions, of which the second one expired in 2010. On March 13, 2012, the City of Ukiah Landfill was put on the *Inventory of Solid Waste Facilities Which Violate State Minimum Standards*, due to chronic violations.

March 30, 2012, the LEA issued a compliance schedule to the City of Ukiah requiring submittal of a final closure and post closure maintenance plan by September 4, 2012.

The compliance schedule also requires the city to commence closure of the facility by July 1, 2013 and complete closure by March 13, 2014.

Part of the discussion was which type of cap would be used, an earth/clay cap or a geo-synthetic liner. After twelve years, at a November 15, 2012, meeting between the City of Ukiah and the agencies involved, there was no resolution of which cap will be used. The agencies stated they were “reluctant to approve the submitted design concepts”, and no permits for closure were issued. These agencies have a determination process for the completeness and correctness of an application. The city has not resubmitted an application for closure.

The 2012-2013 City of Ukiah budget projects the reserve of \$5,081,411 which has been set aside for closure costs and exceeds the estimated costs. Closure costs are subject to change if the regulatory process imposes requirements not contemplated in the Closure Plan. Each year there are more regulations making closure more expensive (Closure Reserve Fund 664).

Each year the City of Ukiah is required to set aside an additional 2% for post-closure maintenance. These funds are derived from a revenue stream from the Transfer Station, which is equal to \$2 per ton of refuse and is estimated to be \$60,000 per year.

CalRecycle is responsible for the proactive monitoring when a landfill is shut down and is no longer accepting refuse. CalRecycle continues to provide guidance in the preparation and implementation of a Proactive Monitoring Program (PMP), which oversees the process of final closure. The landfill must be monitored for leachate discharge and gas emissions for a period of 30 years.

Inspection reports show the Ukiah landfill has been properly maintained since 2001. Liquid runoff (leachate) has been stored in tanks and processed through the city sewer plant. Gases are properly vented. Funds for permanent closure were budgeted and earmarked. Initial plans had been made for closure but never completed. The type of cap is still under discussion. City staff, the city consultant and the various State agencies blame the Water Board for not completing the early review process. The Finance Department of the city stated the site is being well maintained and no action is required at this time.

In the intervening years regulations and requirements have become stricter and more costly. Regulators expressed frustration with the lack of response to letters of censure and may impose fines and penalties on the City of Ukiah. The State Office of Administrative Law approved the current closure and post-closure regulations on April 9, 2010. The regulations became effective on July 1, 2010. The regulations are clear as to what is required by the City of Ukiah.

The implementation of a PMP impacts the level of financial assurance (funding) required of a landfill operator, such as the City of Ukiah. The PMP involves additional ground water, gas migration, well testing and/or increased monitoring frequency of these wells. It also involves monitoring of additional aspects of the landfill, leachate and landfill gas quality and quantity; settlement, including differential settlement; vegetation propagation; slope stability; ground water movement; and erosion control. A continuing trend of lower volumes of leachate and landfill gas and less settlement would indicate that the landfill is stabilizing during a landfill's post closure phase. After five years, a financial review can be performed, which may result in a reduction of maintenance cost.

Post closure financial assurance is required for the entire post closure period; that is, until the owner/operator demonstrates that the waste no longer poses a threat to public health and safety and the environment, for a minimum of 30 years.

FINDINGS

- F1. The City of Ukiah ceased accepting refuse in September 2001 and is twelve years out of compliance. By not adhering to the March 13, 2012 directive from CalRecycle, the city is exposing itself to penalties of an undetermined amount and potential litigation.
- F2. After twelve years, the City of Ukiah and the Regulatory Agencies have not yet determined the appropriate type of cap for the Ukiah landfill.
- F3. The city staff has no plan, no schedule, and shows no motivation to close the landfill.
- F4. A final closure plan and post closure plan are required by the LEA, CalRecycle and the Water Board.
- F5. The City of Ukiah continues to set money aside for closure and post-closure costs, until there is a final closure plan, their estimates are arbitrary. The city has a reserve of \$5,081,411; however, the exact cost is unknown.
- F6. The longer this construction project is delayed, the greater the costs will be. The closure costs are subject to changes in the regulatory process which were not contemplated in the original Closure Plan. (Closure Reserve Fund 664).

RECOMMENDATIONS

- R1. The City of Ukiah obtain resolution regarding which cap will be used, (F2)
- R2. The City of Ukiah meet the requirements of the regulatory agencies and develop an acceptable Final Closure Plan including engineering, plans and permits, (F1, F3-F4)
- R3. The City of Ukiah develops and submits an acceptable Post-Closure Plan. (F1-F6)

REQUEST FOR RESPONSES

Pursuant to Penal code section 933.05, the following responses are *required*:

- Ukiah City Council: respond to F1-F6 and R1-R3 within 90 days

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda and open meeting requirements of the Brown Act.

The Grand Jury *requests* the following individuals to respond:

- Jane Chambers, City of Ukiah City Manager: respond to F1-F6 and R1-R3 within 60 days
- Tim Ericksen, City of Ukiah Director Public Works Department: respond to F1-F6 and R1-R3 within 60 days
- Gordon Elton, City of Ukiah Director of Finance: respond to F1, F5-F6 and R1-R3 within 60 days
- Trey Strickland, Environmental Control (LEA): respond to F1-F6 and R1-R3 within 60 days
- Christine Karl, Director of Permitting (CalRecycle): respond to F1-F6 and R1-R3 within 60 days
- Andy Marino, Director of Closure and Facility Engineering (CalRecycle): respond to F1-F6 and R1-R3 within 60 days
- Diana Henriouille, Supervisor Water Resources Control Engineer/Program Manager, North California Regional Water Quality Control Board: respond to F1-F6 and R1-R3 within 60 days
- Teri Cia, Senior Engineering Geologist Land Disposal Manager, North California Regional Water Quality Control Board: respond to F1-F6 and R1-R3 within 60 days

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| Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury. |
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