

Date: April 14, 2022
From: Friends Of Ralston Creek Neighborhoods – Arvada CO 80007

To: **Administrator KC Becker - EPA Region 8 Office**
Subject: Kilmer Unpermitted Landfill – Arvada CO
Parcel# 30-011-00-018
Reference: RV Storage Development Case#
DA2021-0146

Dear Administrator Becker:

We are writing as representatives of three (3) communities (Forest Springs, GEOS, Westwoods Mesa) that border a previous EPA Superfund Site – an unpermitted landfill known as “Kilmer Landfill”. When Forest Springs first contacted CDPHE, the Jefferson County environmental engineer had trouble finding information. We gave him the 2007 name “Cottonwood Industrial Site” and the 2017 name “Unpermitted Landfill”. The landfill is listed on Page 3821 of the EPA Superfund list; the site is currently archived and designated NPL. The landfill is in Arvada and bordered by the Ralston Creek (north) and Croke Canal (south, west); light industrial development is located at its east perimeter. The address is 6800 Kilmer Street, Arvada, CO – Parcel# 30-011-00-018.

The Planning Staff of the City of Arvada is currently considering a development that would turn the dormant landfill into a storage yard of 550+ recreational vehicles (plus substantial quantities of gasoline, diesel and propane), including lighting, fencing and an administrative building. The developer is currently on its second submission submittal; a third submission submittal is pending. Here a link to the second submission submittal: <https://www.arvadapermits.org/etrakit3/viewAttachment.aspx?Group=PROJECT&ActivityNo=DA2021-0146&key=AO%3a2202111215321215>.

We are in opposition to this development proposal. Our opposition is founded on environmental, and ecological concerns and the fact that the applicant is requesting a major modification to the Land Development Code. To coordinate our opposition, we have formed a non-profit organization known as “Friends of Ralston Creek Neighborhoods” (www.FRCNeighborhoods.org).

Records indicate that Jefferson County operated the landfill between 1939 and 1942. The final closure (capping) date of the landfill is unknown but there is evidence, based on the presence of polymeric materials (not in use until the 1960’s) that the landfill remained open for indiscriminate disposal into the 1960’s. We have been unable to determine the exact date of the landfill closure, and whether the City of Arvada or Jefferson County closed this landfill. Further, it is unclear when and how The City of Arvada annexed the property.

With this correspondence we are alerting you to this development, and potential serious concerns about the viability of this proposed development. Concerns are related to the overall design approach, a reliance on dated testing data, preliminary survey information, and the absence of coordination and collaboration with organizations tasked with the protection of ground water and waterways. With the absence of environmental and ecological assessments the impact of the proposed development during and post construction on residents and natural environment is undefined. Further, we request your support in locating missing historic documentation that can assist in defining individual as well as state, county, and city government involvement/responsibility.

CDPHE is currently reviewing a VCUP (“voluntary clean-up proposal”) application submitted by a developer who is not the current property owner. FRNC residents question if CDPHE has the requisite information in assessing and determining that the development is environmentally and ecologically sound and protects the bordering waterways from contamination. The Memoranda of Agreement between EPA and individual states is

designed to foster effective and efficient working relationships, i.e., cleanups under state oversight. CDPHE's website states "*Cleanup decisions are based on existing standards and the proposed use of the property, but we provide no construction or cleanup oversight. The actual cleanup and verification are the owner's responsibility*". It is our strong belief that the responsibility of verification cannot be assigned to a developer given the history of this property. Accordingly, we are requesting that the development review process is halted, and further review of the VCUP application suspended while your office is conducting its review.

Summary of our concerns.

Design/Construction. With the second submittal, the Applicant is unable to provide a comprehensive, environmentally sound design concept. The current submission submittal does not include plans, cross sections and specifications that are based on current site-specific geotechnical properties thereby demonstrating that the proposed construction is (1) feasible, (2) sustainable and (3) remediates rather than exacerbates environmental risks at the site. Further, the Applicant has not provided a grading plan and preliminary cut, fill, and hazardous materials disposal quantities. Note that the Applicant's environmental engineer has been specific in reports that the vertical and horizontal extent of the existing landfill has not been determined.

Ecological Assessment. The Applicant has not commissioned an Ecological Assessment. The land has been open space and habitat for a variety of species since its closure (likely 1960's). An ecological assessment is necessary and critical. I am enclosing a copy of the Ecological Assessment conducted on behalf of Maple Valley Park. Please note that Maple Valley Park is located along Ralston Creek about one (1) mile downstream from the proposed development site.

There are multiple resources that offer ecological studies/assessments and/or information/recommendations on "developing with wildlife in mind". Ecological assessments offered in city developments are advisory, however the information conveyed is critical for transparency in land development.

We offer the following references: (1) Conservation Data Explorer (<https://cnhp.colostate.edu/maps/codex/>); (2) Colorado Parks and Wildlife (CPW) (<https://cpw.state.co.us/learn/Pages/LivingwithWildlifeDeveloping.aspx>)

Water Contamination. Applicant has not tested the water or bed sediments of the Ralston Creek or Croke Canal. During the 2013 flood a section of the northern flank of the landfill was exposed discharging debris and leachate into the Ralston Creek (see enclosed photo documentation). Reports on the unpermitted landfill authored by the Environment Consultant (Terracon) do not reference this episode (the initial limited site investigation is dated 07.24.2007). Currently, it is unclear what involvement the property owner, The City of Arvada and/or Jefferson County had in assessing and restoring flood damage and whether these efforts included testing. A written request to the City of Arvada regarding this episode has gone unanswered to-date.

The Applicant has failed to investigate and verify whether this incident violates the provisions of the "Clean Water Act" (Section 404) and the "Memorandum of Agreement between EPA and the Army concerning Regulations of Discharge of solid Water under CWA". Jefferson County has experienced a significant amount of flooding events since the mid 1960's. It is unclear whether similar breaches of the landfill occurred during any of these events. Without available documentation describing the remediation effort(s) specific to the 2013 flood event, we are concerned whether any work performed is viable, durable, and suitable to withstand future flooding events. Climate change will drive the severity of weather events; as climate change progresses, we can expect a higher frequency (and severity) of flooding events therefore increasing the potential of further destabilization resulting in debris and leachate discharge into the Ralston Creek and the Croke Canal.

The Management Plan submitted as part of the VCUP application did not include information on locations and description of existing water wells surveyed. The VCUP requires that wells located within ½ mile radius of the proposed development must be located and described.

The MileHighFloodDistrict (MHFD) has not received information on the proposed bank stabilization despite repeated requests [ref MHFD email to J.Bebo (City of Arvada) dated 02.18.22]. We have also contacted MHFD for information on the 2013 breach of the landfill.

Voluntary Clean Up Proposal. Available records indicate that Terracon acted as the environmental consultant for the current property owner (VCGY-10LLC c/o TaxServ LLC/Chelton LLC) and more recently for the non-owner/developer (Carlson Associates). In their capacity as environmental and geotechnical consultants, Terracon issued three (3) reports to the property owner. Starting in June 2021 Terracon's issued reports to the Carlson Associates. On 01.20.2022 Terracon filed a VCUP application on behalf of the developer. It is our understanding that the developer intends to purchase the property contingent upon approval of the VCUP application.

In 2007 Terracon's issued two (2) reports ("Limited Site Investigation" dated 07.24.2007; "Preliminary Geo-Technical Report" dated 07.18.2007) to the property owner. These reports provide distinct recommendations based on Terracon's site assessment.

Terracon's "Limited Site Investigation" report dated 07.24.2007 stated the following recommendations:

"Based on the results of the LSI, the fill materials and underlying native soil encountered during this investigation can be managed as special waste with disposal at a state regulated landfill facility. Additional assessment is recommended prior to site development to more thoroughly evaluate soil and fill materials intended for off-site disposal for compliance with Colorado waste disposal regulations. Groundwater produced during site development activities should be managed according to state regulations."

This Scope Limitations listed in this report stated "...from information obtained from a prior Phase I ESA report prepared by Terracon, and other services performed under this scope of services;...". The recipient or the content of the referenced previous Phase I ESA report has not been disclosed.

Terracon's "Preliminary Geotechnical Report" dated 07.18.2007 stated the following recommendations:

The preliminary recommendations presented in this report are based on the assumption that the subsurface conditions do not deviate appreciably from those encountered in the borings. Supplementary geotechnical engineering exploration should be performed at the site upon completion of preliminary design studies. Supplemental geotechnical explorations will be used to confirm or modify the recommendations contained in this preliminary report. From a development standpoint, the presence of randomly placed and highly compressible landfill materials will require complete removal, or considerable site modification, to construct a more stable subgrade for foundations, slabs and pavements, as well as site utilities. Environmental considerations should also be evaluated in further site planning and preliminary design.

Terracon conducted an additional limited site investigation during 2017 (10.09.2017). The report is addressed to Chelton LLC c/o VCG Properties (we assume that this is same owner entity as referenced above!). The 2017 report, as well as reports issued in 2021 to the non-owner/developer present conclusions and recommendations that are materially different from those presented in 2007.

Terracon "Limited Site Investigation Unpermitted Landfill" report dated 10.09.2017 stated the following recommendations:

Based on the scope of services, limitations, and conclusions of this assessment, Terracon recommends the following:

- *Consultation with CDPHE regarding potential regulatory involvement driven by the historical landfill and the findings of this LSI.*
- *Incorporation of an active vapor mitigation system for any future buildings at the site. Due to the methane concentrations, the VMS would require incorporation of sensors and alarms.*
- *Conduct soil gas sampling along the perimeter of the site boundary in areas where neighboring buildings adjoin the site.*
- *Use of a Materials Management Plan to facilitate management of environmentally impacted media during redevelopment activities.*

On January 20, 2022, on behalf of the non-owner/developer Carlson Associates, Terracon applied for a "Voluntary Clean-Up Proposal" (VCUP) to CDPHE. The application is based on the Terracon report dated 12.03.2021. In this report Terracon reaches the following conclusion:

"It is also our professional opinion that additional site assessment is not required at this time. If site development plans change, we should be contacted to evaluate the effects of those changes".

Terracon's reports span a period of nearly fifteen (15) years but do not explain the significant change in Terracon's conclusion and recommendations evolved. Terracon's 2007 recommendations were not implemented. The main discernable difference is a change in client and the prospect of the sale of this brownfield site. It is our understanding that VCUP applications need to be filed by the property owner not a potential or future owner who seeks to execute a land purchase contingent on the approval of this application. Without all pertinent information considered, and a full understanding of the impact of the 2013 flooding event, we are concerned that CDPHE may underestimate the impact of this proposed development vis-vis any future leachate and debris discharge on water quality, and the riparian areas of the Ralston Creek and the Croke Canal. CDPHE to-date has not responded to the 2013 flood documentation submitted.

Both, Jefferson County, and the City of Arvada appear to have incomplete records on the history of this unpermitted landfill. The Jefferson County Health Department has not responded to requests for documents by Terracon. The City of Arvada has not offered any readily available and/or archived information/documentation on the landfill as part of the development proposal review. We do not have documentation on the history of the property title, how/when the land parcel was annexed by the City of Arvada and the presence of environmental liens, activity and use limitations at the county and municipal level. Any historical information must be part of CDPHE's review of and response to the VCUP application. Further, this information is critical in the attempt to understand what is driving this development.

Summary

The Applicant, Carlson Associates appears intent on quickly securing an approval of his VCUP application; approval of the VCUP application appears to be a precondition for the land purchase and the development. Our research demonstrates that the development proposal submission submittal to-date is incomplete; the development proposal is based on preliminary investigations and does not address environmental and ecological concerns.

CDPHE does not have sufficient information and/or documentation to decide on this application; approval of the presently submitted VCUP would allow the developer significant latitude, both in design and execution of this development potentially exacerbating rather than remediating environmental risks within undetermined consequences for existing ecological systems. During a neighborhood meeting designed to answer questions

by residents of the communities adjacent this development, the developer and his team of consultants failed to provide answers or alleviate concerns.

It is our opinion that involvement of your office is necessary and essential in the determination on whether this development can move forward given the risks and concerns described. We are looking forward to meeting with EPA staff to further discuss this development.

On behalf of the members of Friends of Ralston Creek Neighborhoods I appreciate your attention to our concerns.

Thank you for your prompt attention to this matter.


Sincerely,

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