



33 Years of Protecting Kentucky's Environment

November 21, 2016

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To whom it may concern:

These comments are submitted on behalf of the Board and membership of the Kentucky Resources Council, Inc., including members and clients who are directly affected by the terms and conditions of the proposed Agreed Order. The comments below are submitted in support of rigorous enforcement and remedial provisions to deter future violations of state and interstate commitments to prevent disposal of TENORM in the Commonwealth of Kentucky.

The Council has reviewed the proposed Agreed Order and offers these comments:

1. The Council appreciates the Energy and Environment Cabinet (“Cabinet”) making the proposed Agreed Order available for public comment prior to entry of such order.

2. The Council supports the requirement to develop a Corrective Action Plan (CAP), and encourages the Cabinet to assure that the CAP incorporates those requirements developed by the Oil and Gas Working Group that are science-based and intended to assure that the disposal of the wastes does not present a risk to public health and safety over the extended period that the Ra-226 and other

radionuclides will remain a potential health threat. Such measure would include a RCRA Part C cap, and maintenance of a barrier of clean soil of 10 feet between the uppermost waste placement and the bottom of the Part C Cap. KRC looks forward to review and comment on the proposed CAP.

3. KRC supports the imposition of a requirement, in addition to the review or waste manifests, of installation of equipment capable of detecting activity above the *de minimis* threshold of 5 pCi/g.

4. KRC supports the imposition of civil penalties in an amount sufficient to remove any financial incentive from acceptance of the prohibited waste, and the opportunity to substitute Supplemental Environmental Projects of material benefit to the community in lieu of payment of civil penalties into the general fund.

5. KRC believes that Advanced Disposal Services (ADS) should be required to provide lung and general health screenings on an annual basis for each worker who was exposed to the illegal wastes, for a period of 30 years post-closure of the facility. The exposure of workers who were uninformed of the potential risks cannot be retroactively modeled, and assumptions that there was no elevated risk are inconsistent with the predominant health science suggesting that there is no “low dose” of exposure to Ra-226 that is not without elevated risk.

6. In Numerical Paragraph 6, the phrasing of the second sentence should read “Blue Ridge asserts that it relied upon the judgment of the third party technical consultant to determine that the BES material could be disposed of at the Blue Ridge Landfill.” KRC does not believe the Cabinet should concede this point.

7. Numerical paragraph 11 should identify the levels of radionuclides that were detected, and the state and federal levels against which the samples were compared.

8. The AO should also note that there was a “hot” area detected that was not within the cell where the out-of-state TENORM was disposed, indicating that waste (a filter sock, on information and belief) from another source had been accepted and was still on the surface of the landfill.

9. Numerical Paragraph 19 should be revised to require that the CAP be protective of human health and the environment **over the period of time that the waste exhibits radioactivity above background levels.** Ra-226 has a half-life of 1600 years; the typical post-closure care period of a contained landfill is 30 years.

10. Numerical paragraph 19(b) should **eliminate** any Cabinet consideration of cost of the remedy, inasmuch as protection of human health and the environment is not a factor to be comprised based on cost, but rather is paramount and not to be compromised.

11. The proposed CAP should be subject to public notice and reasonable opportunity to comment on the remedy. Given the complexity of the situation and the need for expert support in determining whether the proposed remedy is protective, a minimum of sixty (60) days for public comment should be provided, and the Cabinet should commit to provide a response to comments received.

Thank you for your provision of an opportunity to review and comment on the proposed Agreed Order.

Cordially,

A handwritten signature in black ink, appearing to read 'Tom FitzGerald', with a long horizontal flourish extending to the right.

Tom FitzGerald
Director