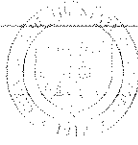


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DISTRICT 1



## Arizona State Legislature

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PUBLIC SAFETY

October 15, 2020

ADEQ Director Misael Cabrera, PE  
1110 W. Washington Street  
Phoenix, AZ 85007

Dear Director Cabrera,

I understand you have been inundated with letters from my constituents over the environmental assessment (and the county's transparency) concerning a proposed 600-bed Criminal Justice Center in Prescott. I have been besieged by my constituents as well. I solely wish to represent my District in the best way possible for all concerned. At this point, I am alarmed at the speed by which the county is moving forward with this project before all questions have been clearly and honestly answered.

Specifically, I recently learned of additional potential environmental and health issues as it pertains to the environmental assessment. This is especially disconcerting given the potential long-term health consequences to county employees, inmates, and ultimately, the financial impact to taxpayers. My biggest concern is additional information, beyond the July 2020 Phase I Environmental Site Assessment, which was not considered. My concerns are based on new information, a technical review of historical documents, and emerging trends in environmental justice.

Examples include:

1. The site's groundwater is not well characterized as evidenced by the limited sampling and the complexity of the influencing factors. The primary concern is the possible release of leachate and gas from the landfill. Notably, the property was under a Restrictive Covenant.
2. The site was once used as a shooting range by both the Prescott Sportsman Club and the County Sheriff's Office. As far as can be determined, no sampling or closure plan was completed. Moreover, the area is now in the process of being bulldozed over. If so, this may have violated ADEQ and EPA regulations.
3. The presence and state of septic systems, wells, and underground tanks are, at best, confusing. It is not known if all of these points of potential contamination have been identified and characterized.

Additional, more specific information and items of concern are provided in *Attachment A*. Item One, however, warrants explanation in greater detail here:

In April 1995, the City of Prescott developed a closure plan and submitted it to ADEQ with a request for an exemption from well monitoring so long as there was no evidence of

groundwater contamination. However, evidence of groundwater contamination was detected, and the exemption was denied in March 1998. In an April 1998 letter, ADEQ curiously reversed its position based on an arguably limited testing protocol supplied by the City. (ADEQ did not even review the testing protocol.) The "Official Closure" letter of February 2002 required the City to notify ADEQ before "alternative land use plans" were initiated. In June 2020, long after the landfill had been closed, **AND WITHOUT ANY** intervening monitoring data, ADEQ approved the proposed Criminal Justice Center now underway.

Why is this significant? The characterization of this property is -- at best -- imprecise. ADEQ issued its key rulings when the full scope of the proposed Criminal Justice Center was not defined. Simply put, at build-out there will be a 600 bed, 250 million-dollar (plus) complex sitting on top of a brownfield adjacent to an unmonitored landfill !

Director, after reading the enclosed attachment, please ask yourself if the private sector would develop this property. Even if the risk was low, the potential for liability is so great I firmly believe no one in private industry would touch this site. Is it because taxpayers are the ultimate payors, the government is willing to proceed in this instance?

Your department's October 2020 recommendation for landfill gas monitoring is clearly a step towards the type of safeguards required for this site. And I am grateful for Laura Malone's work so far. I merely ask the ADEQ to continue to devote resources to address the issues raised in *Attachment A*. At the very least, a definitive monitoring plan will require careful and continued planning on your part. (I refer you to Note #2 in the enclosed attachment.)

Given the technical issues raised and rapidly evolving political repercussions, the ADEQ must take a much more detailed look at this brownfield site and make updated rulings which are consistent with current dynamics. Specifically, the attention to prison development and health considerations are rapidly gaining attention as a strategic concern of environmental justice. NGOs such as the NRDC and government research organizations such as the CDC are taking note. **Given the information we have, if some time in the future any liability should arise, political fallout will be immeasurable because we failed to act now.** Let us make sure it does not happen on our watch, Director.

I would be happy to provide information and technical assistance by those who have supported me to date. Thank you in advance for your cooperation in this serious matter. I look forward to speaking with you before the scheduled October 22<sup>nd</sup> virtual community meeting.

Sincerely,



State Representative Noel Campbell, LD-1

cc: Mike Keyack – Deputy Director

Laura Malone, Director of Waste Programs Division

# ATTACHMENT A

The following are not listed by priority but rather in the order taken from the documents reviewed as specified in the header of each section. Most are text extracts placed “in quotes” plus *emphasis* added along with the reviewer’s interpretations and opinions.

## Report on Phase I Environmental Site Assessment, Speedie and Associates, July 31, 2020

### 1. Page i

“Evidence was found that the past releases from the former underground storage tanks (USTs) located on the southern portion of the *Property had concentrations of aromatic hydrocarbons above the residential Soil Remediation Levels (SRLs)*. However, the Arizona Department of Environmental Quality (ADEQ) determined that the USTs were non-regulated *based on information provided by the past Property owner and no further investigation was performed.*”

These areas should be investigated based on the significance of the proposed development.

### 2. Page 1

“*June 12, 2020, ADEQ approved proposed site infrastructure* development within the portion of the property of which the Restrictive Covenant is attached.”

There was no systematic landfill groundwater and soil vapor testing in the decade before the decision by ADEQ to permit development. The landfill was, in all probability, assumed by ADEQ to be “dormant”. A single battery of testing will not necessarily yield meaningful data on groundwater and especially vapor testing since there can be seasonal weather variations that would directly impact the test results. Specifically, Prescott is having one of the driest seasons in history. The Agency for Toxic Substances and Disease Registry (ATSDR) states: “The presence of moisture (unsaturated conditions) in a landfill increases gas production because it encourages bacterial decomposition. Moisture may also promote chemical reactions that produce gases.” Also, according to research published International Journal of Epidemiology, there may be health issues caused by off-gassing that go beyond just the perimeter of a landfill.

### 3. Page ii

“*Groundwater samples should be collected from the two (2) wells* observed on the southern portion of the Property to whether groundwater beneath the Property has been impacted.”

It should be determined if these recommendations were followed. There are reports that these wells were bulldozed over.

### 4. Page ii

“that *vegetation disturbance should be avoided* during the bird breeding season, from February 15 through August 31, to minimize potential impacts to nesting birds.”

There are reports that this recommendation was ignored and the site bulldozed one or two weeks in advance. This disregard for the recommendations may be symptomatic of other issues

such as the removal of waste. For example, there were recent reports of debris being stacked and burned on-site yielding pungent smoke that did not resemble brush and wood waste. Prescott is under Stage 1 fire restrictions.

5. Page 3

"The scope of work does not include chemical analyses of air or groundwater or vapor intrusion . . . .  
... regulatory compliance, industrial hygiene, health and safety, indoor air quality unrelated to releases of hazardous substances or petroleum products into the environment."

The health considerations may be, however, a significant factor, but they were outside the scope of this ESA study. When and how will they be evaluated?

6. Page 4

"At the time of the site visit, the Property consisted of approximately **14.21 acres of vacant land**. Ground cover consisted of bare soil with scattered weeds, grasses, shrubs and trees. **No structures or dedicated site uses were observed** on the Property."

The issue is that this ESA report did not provide updated sampling information on the potential for contamination. Earlier studies were relied on. Again, as in note #5 above, health considerations may be significant but no new data was available. With the removal of structures, identifying reference points to sample becomes problematic.

7. Page 6

"The Property soils were classified as the Balon **gravelly sandy clay loam** and the Lynx soils."

The relevant point is that contaminants can readily migrate in this type of soil.

8. Page 7

"groundwater flow resulting from local **groundwater gradients may vary considerably** in the area due to surface recharge, groundwater pumping and local subsurface geology"

The keywords are: "vary considerably." This is a very important consideration relative to the landfill monitoring and the fact that ADEQ approved the site closure based on "no contamination" yet the underground conditions can vary as indicated.

9. Page 7

"The **well was of particular concern** because **it was next to a landfill, which was open to all kinds of waste**, and was uphill from a lake located less than one-eighth of a mile away."

This statement indicates that well contamination from the landfill was, in fact, a concern.

10. Page 9

"In the 1954 aerial photograph, the subject Property appeared as native desert and vacant land."

There are two areas on the 1954 aerial photo where there are indications of a possible shooting range. Lead sampling was not done in these areas, nor were any attempts made to interview individuals in the Sheriff's department or the Prescott Sportsman Club who may have

had some knowledge of the area's history. These areas are bulldozed over and lead may be present. Most of the lead testing was related to lead in paint on the structures.

11. Page 12

"Ownership of parcel numbers 105-06-003B and 105-06-003H was transferred from the City of Prescott to Prescott Sportman's Club in 1952; to Leon K. and Evelyn Petersen in 1957"

This statement documents the presence of a shooting range on the property from 1952-1957. It is known that the range moved to Prescott National Forest property off of Iron Springs Road. That property was remediated in 2017 at a cost of \$1.6 million.

12. Page 21

"Therefore, our *inability to conduct an interview with the past Property owner* [Mr. Keith Bunker] of parcel number 105-06-003B is considered a significant data gap. It is our opinion that this data failure may impact our ability to identify RECs on the Property and *may affect the conclusions of the report.*"

Clearly, this indicates that the nature of the property contamination was not fully known and that the testing done may or may not have defined site conditions.

13. Page 28

"Since 1984, manufacturers of transformers have been certifying them "non-PCB", containing less than 50 parts per million (ppm). *Two (2) pole-mounted transformers were observed* on the southern boundary of the Property."

This concern is not over the transformers observed but any transformers or substations before 1984. This was not investigated.

14. Page 32

"There were various documents that noted *problems with operations and maintenance at the landfill, as well as groundwater contamination with VOCs and nitrates, standing water, lack of slope, and inadequate, inadequate compaction, inconsistent soil cover, uncontrolled surface runoff, and compliance by the City in the 1970s and 1980s.*"

This further illustrates the likelihood of long-term contamination issues.

15. Page 32

"It was reported in earlier documents from ADEQ that there was contamination of the *groundwater that was attributable to the landfill based on groundwater data obtained from three (3) wells adjacent to the landfill in May 1985.* . . . The groundwater monitoring well was considered down-gradient of the landfill and within the uppermost aquifer. The documents indicated that *past landfilling practices were not documented well, but it was believed refuse was filled to depths close to groundwater (greater than 40 feet bgs) and possibly in a creek bed.*"

Again, this indicates the issue of groundwater contamination from the landfill.

16. Page 33

**"On July 8, 1993, the ADEQs Permits Hydrology Unit reviewed the Groundwater Contamination Study report and indicated that *the report was incomplete as it did not clarify or give supporting data for its conclusions regarding the hydrogeologic conditions in the area or the distribution of contaminants in the shallow aquifer system. Groundwater contamination has been historically detected in the area of the Sundog WWTP and the Sundog Landfill.*"**

This indicates the complexity of the hydrogeologic conditions, yet the landfill was closed without the need for monitoring.

17. Page 35

**"the City reported *that the lack of a surface seal and silt collection in LF-1 produced unrepresentative sample results and the cause for the elevated concentrations of inorganic parameters in groundwater samples collected from LF-1. ADEQ accepted this information and indicated that the source of the elevated inorganic constituents in groundwater samples collected from landfill monitoring LF-1 do not appear to be an indication of landfill impact. ADEQ concluded that evidence of groundwater contamination from the landfill did not exist and the small landfill exemption could be granted*"**

Considering the conflicting statements related to groundwater flow, contamination, and data (or lack thereof), this determination by ADEQ is highly suspect. In effect, the integrated, overall site condition and history were ignored, and instead, one "data point" in time was used as justification to stop landfill monitoring and grant an exemption without any follow-up to verify if this was the correct decision. The entire groundwater history should be evaluated, and new wells installed and monitored.

18. Page 35

**"In February 2003, ADEQ Solid Waste Plan Review Unit indicated that the use of wood chips on the top of the *landfill's erosion layer was a temporary measure* to minimize wind erosion. *They recommended the City use a permeant material* that was capable of resisting wind force and provides adequate protection to public health and the environment."**

It has been reported that the landfill cover has never been properly established. This needs to be investigated by ADEQ.

19. Pages 35-40

**"The contractor and county representative decided to remove the USTs on the spot and *it was not reported to ADEQ*. The steel tanks were in bad condition but one tank contained a significant amount of this substance. *The tanks came out in pieces, the substance spilled out and remained in the pit, and was then left in place and backfilled.*" "March 15, 2017 regarding the cleanup/testing in the tar location, and the discovery of *USTs that were unknown and not disclosed by the City of Prescott.*" "WT contacted ADEQ on May 3, 2016 regarding the non-regulated residential status of the USTs. *ADEQ indicated that the site would not be re-opened by ADEQ unless an affidavit from the former owner was obtained refuting the original information Mr. Bunker had given to ADEQ***

These six report pages document the history of underground storage tanks and their associated contamination. The preceding text extracts from the report illustrate the disarray of the management of the site by past owners concerning tanks, their identification and discovery, associated contamination, and proper removal. It raises the question of whether sufficient characterization was done at the site by the controlling government agencies.

20. Page 43

*"Although the former landfill was closed pursuant to 40 CFR 258 small landfill exemption in 2002 in which **landfill gas or groundwater monitoring was not required**, the potential exists that groundwater beneath the Property may still be impacted from the former USTs and/or the former landfill."*

No clearer statement exists for the current situation. Yet there is no evidence that the design of the facility has considered this assessment. The full implications of this assertion need to be carefully addressed in the facility's design.

21. Page 52

*"According to the Black & Veatch **1995 Closure Plan**, groundwater and landfill gas monitoring were to be continued by the City."*

Groundwater and vapor monitoring were recommended because of the data available at the time. The question remains, "What solid, verifiable evidence was developed later to refute this need?" There appears to be a dearth of information in the records to justify the termination of monitoring.

22. Page 210

In response to the environmental questionnaire, there is a reference to the manufacture of "**power poles**" at the sawmill operated by Keith Bunker on-site as reported by Brandon Shoults, a County employee.

Such operations typically use toxic materials to preserve such as pentachlorophenol, or Copper Naphthenate, and Creosote. Another indication of possible contamination.

**Phase I Environmental Site Assessment, Yavapai County Parcel 105-06-003B, Prescott Lakes Parkway, Southwest Ground-water Consultants, Inc. (SGC), July 29, 2006**

23. Page 5

*"It should be noted that **regional hydrogeologic data may not predict Site-specific conditions**, such as isolated perched-water systems or **local variations in groundwater flow** due to recent precipitation or high- volume pumping in the area."*

Again, the message is that subsurface conditions vary considerably, yet the City and ADEQ chose to rely on limited data in predicting offsite contamination from the landfill

24. Page 12

"Because *sufficient documentation is not available to confirm that the facility was closed in accordance with ADEQ requirements*, it is Southwest Groundwater Consultants, Inc.'s opinion that this represents a recognized environmental condition."

"Because floor drains in truck shops are features where solvent s and other automotive fluids may be introduced into wastewater, the *potential hazards associated with such a disposal point are significant*. A previous environmental assessment of the Site indicated the *possible presence of a chlorinated solvent* in the subsurface."

"The large amount of the material and large site area which it obscures indicates a significant potential for unknown materials within or below the material.

These three text extracts from the 2006 report provide additional indicators of the haphazard condition of the site.

**Corrective Action Excavation Work Plan prepared by [Western Technologies] dated January 12, 2018**

25. Page 1

"outline for the *removal of soil and tar from the area around three former tanks* at the south corner of Prescott Lakes Parkway and Sundog Ranch Road in Prescott, Arizona (the Site).

The site contained a hot tar facility and required remediation.