

From: [Jeffrey L. Kleinman](#)
To: [Coffin Butte Landfill Appeals](#)
Subject: Coffin Butte Landfill--LU-24-027
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Attachments: [BOCC Memorandum of Valley Neighbors for Environmental Quality and Safety 1-27-26.pdf](#)

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Hello,

Attached please find Memorandum of Valley Neighbors for Environmental Quality and Safety for the record in the above matter. Please confirm receipt.

Thank you.

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January 27, 2026

**MEMORANDUM OF VALLEY NEIGHBORS FOR
ENVIRONMENTAL QUALITY AND SAFETY**

TO: Benton County Board of Commissioners

FROM: Jeffrey L. Kleinman

RE: RECONSIDERATION IN FILE No. LU-24-027
(Republic Services/Valley Landfills Inc.)

**I. RELEVANCE AND EFFECTS OF DEQ
PRE-ENFORCEMENT NOTICE**

This office represents Valley Neighbors for Environmental Quality and Safety (“Valley Neighbors”). DEQ’s Pre-Enforcement Notice (“PEN”) of November 6, 2025 is highly relevant to this Board’s reconsideration of its earlier decision in this case. In so stating, it is important draw a distinction between two seemingly related but in reality separate issues. The applicant will argue that the violations described by DEQ have not been fully adjudicated, and that is true. Indeed, especially as regards penalties and remedies, the applicant can drag out litigation of the matter for years. The cases that address the relevance of code and regulatory violations generally do so in the context of local provisions that do not allow consideration of land use

applications where such violations exist.¹ That is not the issue here, and any argument based upon it would be missing the point.

The second issue is the pertinent one. The PEN sets out highly relevant evidence gathered by *neutral* agencies with the scientific and technical expertise to procure and evaluate it, and not by consultants in the employ of Republic/VLI. That evidence is properly before you and justifies a different outcome on reconsideration of your earlier decision. We do know that rather than disputing the actual evidence, the applicant tried to stymie further compliance review by rejecting proposed drone ‘sniffer’ overflights. Nothing to smell here, folks!

Proponents of the application have insisted that the impacts identified by opponents who have to live with those impacts 24-7-365 are not credible in the face of the ostensibly contradictory statements of the paid “experts” with limited if any time logged on the site. Instead, credible eyewitness testimony and sadly lived experience have been brushed off by proponents as “merely anecdotal.”

That was of course insulting, in addition to being wrong as a matter of law. Now, though, you have before you the objective findings described in DEQ’s PEN. Regardless of whether they comprise adjudicated “violations,” they provide

¹Some lay witnesses may naturally refer to “violations” in their written testimony, but it is the actual evidence they discuss that is relevant here.

persuasive evidence as to both (1) the impacts of the applicant's operations, and (2) whether compliance with the county's approval standards through the adopted, and any possible newly proposed, conditions of approval will be feasible. And that evidence fully supports the sensory conclusions of so many of your citizens, several of whom have their own scientific and technical expertise—this *is* Benton County, after all.

What impacts are described in the PEN?

- Since at least 2022, VLI has failed to conduct SEM [surface emissions monitoring] as required by Subpart AAAA and Division 239 by consistently excluding large areas of the landfill where SEM is required * * *.

First, in both the fourth quarter of 2024 (Q4 2024) and the first quarter of 2025 (Q1 2025), VLI excluded a large area of the landfill to the north of the monitoring grid and provided no rationale for the exclusion. Second, VLI excluded areas (in green on the above maps) as "[e]xempt due to high vegetation." DEQ has not approved any such exemptions. To the contrary, DEQ's expectation is that landfills maintain vegetation such that SEM can be conducted each quarter. Third, VLI failed to monitor a large area (in yellow on the above maps) claiming it as an "[a]ctive area." Such a large area does not comport with the definition of "working face" in Division 239 and DEQ has not approved any other exemptions for active areas of the landfill. Finally, VLI claimed a large area (in purple on the above maps) as "[e]xempt due to steep slope/health and safety." While the safety of monitoring personnel is important, DEQ has not approved any exemptions from SEM on this basis. DEQ further notes that much of the area in the southern portion of the landfill that was claimed as exempt from SEM due to high vegetation or safety reasons in Q4 2024 was successfully monitored in Q1 2025.

- In addition, during both EPA inspections - in June 2022 and June 2024 - EPA documented a significant number of exceedances of the 500 ppm standard

as compared to VLI's own SEM. For example, on June 23, 2022, EPA monitored only a portion of the landfill and documented 61 exceedances, 21 of which were above 10,000 ppm methane. In contrast, VLI's own SEM of the entire landfill, conducted on June 9, 2022, detected only 6 exceedances of 500 ppm methane. On June 21, 2024, EPA monitored only a portion of the landfill surface and found 41 exceedances of 500 ppm or higher. In contrast, in its own SEM of the landfill on March 26 and 29, 2024, VLI identified only 11 exceedances. * * *

Based on VLI's significant noncompliance with SEM requirements and the need to safely conduct comprehensive SEM, DEQ is requesting that VLI submit a permit modification application to allow for drone monitoring.

Thus, monitoring only a portion of the landfill, for methane emissions which are limited to 500 ppm (parts per million), EPA found emissions of more than 10,000 ppm (20 times the legal limit) on 21 occasions during a limited inspection period. Do you wonder why members of the public complain about health hazards, fire hazards, and inability to stay outdoors or open their windows during the summer months? The applicant's self-testing which covered the entire landfill, somehow found remarkably fewer and smaller violations. And this is the operator you would ask the public to trust with self-monitoring and self-reporting emissions, odors, and other outputs and impacts? And you would rely upon a hypothetical future enforcement officer compensated by Republic/VLI? We are talking about science fiction here.

As further evidence of the applicant's cooperative attitude, consider its December 30, 2025 response to the drone overflights proposed by DEQ. A copy of

that response, excluding its attachments, is appended as Exhibit A. Its answer is protracted, but may be summarized as “no thanks.”

We continue with the contents of the PEN:

- In December 2021, VLI submitted an amended Design Plan for the Coffin Butte landfill to DEQ (2021 Design Plan). The calculations in the 2021 Design Plan that VLI has used to determine the sizing of the installed GCCS [gas collection and control system] at the Coffin Butte landfill are inconsistent with rule requirements. Specifically, the calculations in the 2021 Design Plan did not include waste placed in the landfill prior to 1998, did not use total waste (instead the calculations included separate runs for modified bulk waste construction and demolition waste), and did not use model parameters required by rule. In addition, the 2021 Design Plan assumes a 75% collection efficiency for GCCS design. The calculations in Subpart AAAA and Division 239 include no such assumption; rather, they require GCCS design for 100% of the maximum expected gas generation flow rate. As a result, the 2021 design and the subsequent installation and operation of the Coffin Butte landfill GCCS is undersized as compared with the maximum expected gas generation flow rate. Also, VLI modified the GCCS by installing and commencing operation of a new enclosed flare on August 6, 2024. However, VLI did not submit an amended Design Plan to reflect that change as required under OAR 340-239-01 10(l)(b). * * *

DEQ also has concerns about VLI's operation and monitoring of the Coffin Butte landfill GCCS. * * *

During the first six months of 2025, the new enclosed flare was offline intermittently for a total time period that adds up to over 15 calendar days. The collection system was only down for approximately 17 hours during that same six-month time period in 2025. * * *

In its semi-annual compliance report for the first half of 2025, VLI reported that it failed to monitor 8 wellheads; some of the wellheads were not monitored for multiple months during January-June 2025. In a letter dated Sept. 12, 2025, Valley Landfill submitted a permit deviation report that informed

DEQ well 2V000114 was not monitored in August of 2025.

Landfill Cover Integrity

* * *

DEQ has reviewed VLI's reports regarding its monthly visual inspections of the landfill cover from January 2021 through the present. With the exception of a single report for September 2024, VLI has consistently reported conducting monthly inspections of the landfill cover, with "no issues" or "no holes" found during the inspections. In contrast, during EPA's June 2024 inspection of the landfill, EPA and DEQ inspectors observed many holes in the landfill cover and a significant number of trees growing through the plastic cover. The EPA inspector who prepared the inspection report stated: "I noted that there were a number of plants growing out of the cover material at the top of the western side of the landfill in the area along the edge of Cell 3 and Cell 5. Some of the plants were between 1.5 to 3 feet tall."

Fugitive Dust

Over the last several years, DEQ has received many complaints from the public regarding fugitive dust from the Coffin Butte landfill. One of the primary concerns of complainants, which is supported by photographs, is that when tipping occurs, some waste loads generate a significant plume of dust. Condition 4 of VLI's Title V permit requires VLI to take reasonable precautions to prevent particulate matter, including dust, from becoming airborne, and lists a number of strategies that may be used. Condition 5 of the Title V permit requires weekly visual surveys for any sources of excess fugitive emissions using EPA Method 22. DEQ is requesting records of these Method 22 surveys in Information Request #6, and an evaluation and plan to control fugitive emissions generated by tipping dry loads in Corrective Action #5.

Based on the above, DEQ has concluded that Valley Landfill, Inc. is responsible for the following violations of Oregon environmental law:

* * *

As described above, VLI violated multiple important state and federal requirements aimed at controlling landfill gas emissions. One of the major constituents of landfill gas is methane-a potent greenhouse gas that contributes to climate change. Landfill gas also includes nonmethane organic compounds, some of which are known or suspected carcinogens and may cause other serious health effects. Landfill gas emissions also affect human welfare due to odor. Therefore, failure to control landfill gas emissions from the Coffin Butte landfill as required has significant environmental and public health impacts.

To reiterate, Valley Neighbors do not ask you to find the existence of any of the violations of law and regulations which are then laid out by DEQ. The applicant can do what it wants to settle and compromise those, or to argue that the specific evidence gathered by EPA and DEQ is somehow in error or irrelevant. The violations can be adjudicated until the cows come home and the herons return to their rookery. What is important in the matter at hand is the recitation of compelling evidence by qualified neutrals, contradicting the work of the applicant's paid consultants and laying waste to the applicant's assurances.

It is also important to keep in mind the time frame within which the applicant's exceedances and other deficiencies took place. As set out in the PEN, they occurred during the period commencing in 2022. This covers the dates between (1) the Planning Commission's denial of the applicant's previous application in File No. LU-21-047, its appeal to the BOCC, and its withdrawal of that appeal, and (2) its preparation and submission of the revised application before you now and many of the

county's proceedings on it. Given the stakes, and regardless of the matters set out above, one could assume for the sake of argument that the applicant has employed the maximum good faith and best efforts at controlling adverse impacts during this critical period, *i.e.*, that they had the firmest possible grip on their operation to avoid harmful impacts and be the best possible neighbor they could ever be. To assume otherwise, one would have to conclude that they are either self-destructive or (erroneously) believe they have this county and its Board of Commissioners tucked safely in their back pocket.

Thus, the outcomes described in the PEN reflect *the very best* that Republic/VLI is capable of achieving. This Board can pile on all the conditions of approval that it and its planning consultant could possibly dream up and it would make no difference.² The applicant's commitments to you and to the community are simply not credible.

You are entitled to make a decision based upon an applicant's credibility or the lack thereof. This has been the law in Oregon since the Court of Appeals rendered its decision in the pre-LUBA land use case of *Jurgenson v. Union County Court*, 42 Or App 505, 600 P2d 1241 (1979). In *Jurgenson*, the Court concluded that a local

²Note too that cities and counties are not required to approve applications with conditions, rather than deny those which do not comply with local approval standards. *H2D2 Properties, LLC v. Deschutes County*, 80 Or LUBA 528 (2019).

government could deny a land use application solely on the basis that the proponent did not sustain its burden of proof as a matter of law, even in the absence of contrary evidence, because the applicant's own uncontradicted evidence was not credible. That case still states the controlling law. The present case, of course, is marked by a vast body of contrary evidence.

Should further conditions be drafted, then as with several of the existing conditions, determining compliance would necessarily entail the exercise of discretion. This would in turn compel a process allowing for public participation.

There has been a bit of a dispute regarding the relevance of impacts of the existing landfill to the proposed expansion site. In this regard, please bear in mind that the applicant has applied for an expansion of the existing landfill. It has not applied to open a new landfill, in which case it would face much more onerous approval standards. The applicant cannot have it both ways.

In *Stop the Dump Coalition v. Yamhill County*, LUBA No. 2015-036 (Final Opinion and Order, November 10, 2015) slip op 46-47, LUBA made clear how to address the impacts of an existing landfill operation expanding to an adjacent area. In that case, Riverbend Landfill applied to expand its fill because parts of its existing site were filling up, just as is the case with Republic/VLI here. LUBA addressed the issue squarely and held:

Initially, we note that in most cases where the significant change/cost test is applied to a proposed use, the nature and severity of the actual impacts are somewhat speculative, because the use does not yet exist. In the present case, the nature and severity of the future impacts of the expanded landfill are relatively well-known, because those impacts will likely be very similar to the impacts of the existing landfill. That is because, as the county explains, the volume of garbage processed at any one time and the operational aspects of the proposed expansion will be very similar to the existing landfill operation that the proposed expansion will effectively allow to continue.

The only distinction between the circumstances in the matter before you and those described by LUBA is that the working face proposed here would actually be considerably larger than those on the currently operating portion of the landfill.

II. EX PARTE COMMUNICATIONS/BIAS

At the initial proceeding reopening this matter for reconsideration on November 20, 2025, Mark Yeager attempted to inquire of Chair Malone's as to his relevant ex parte contacts serving on the legislature's Joint Task Force On Municipal Solid Waste in the Willamette Valley. He chairs that task force, which is primarily concerned with this landfill. A representative of the applicant also serves on the task force, which has held one meeting thus far.

Mr. Yeager's inquiry may have served to show bias, and Mr. Yeager was entitled to inquire instead of being cut off.³ The only disclosure made by Chair

³After being barred from speaking, Mr. Yeager submitted two documents into the record on November 20 which lay out the intended inquiry and its purpose.

Malone was that the task force is only concerned with the future of the landfill, which he suggested is not pertinent here. Indeed, that is the precise subject of this case and your reconsideration. Had Chair Malone disclosed the substance of his communications with others, Mr. Yeager (and others) could have offered rebuttal and, if warranted, stated their challenge. As LUBA has stated,

The problem is that the county failed to comply with ORS 215.422(3)(b), the requirement to make a "public announcement of the content of the communication and of the parties' right to rebut the substance of the communication * * * at the first hearing following the communication * * *".

Gardner v. Marion County, 56 Or LUBA 583, 588 (2008).

The content of the Chair's communications was not provided and inquiry regarding them was forbidden. This was error. In addition, the task force is scheduled to conduct two more meetings prior to your reaching a decision on reconsideration. The parties have a right to inquire of Chair Malone as to his task force-related ex parte communications at or with respect to those meetings, and to make any desired challenges for bias if any, before you deliberate and make your decision.

III. CONCLUSION

Please forgive the rather coarse reference, but the pig has now emerged fully from the poke. It is natural for a rational decision maker to experience a serious case of buyer's remorse.

For the reasons presented in DEQ's PEN and discussed here, the applicant has not sustained its burden of proof under the county's approval standards. In particular, it has failed to make the required showing under BCC 53.215(1) and (2), that:

(1) The proposed use does not seriously interfere with uses on adjacent property, with the character of the area, or with the purpose of the zone.

(2) The proposed use does not impose an undue burden on any public improvements, facilities, utilities, or services available to the area; * * *

The applicant has also failed to demonstrate that any additional conditions of approval would make compliance with your approval standards "feasible," meaning possible, likely and reasonably certain to succeed. The evidence set out by DEQ proves that the opposite is true.

Accordingly, based upon the evidence reported by DEQ, this Board upon reconsideration should deny the application which is again before it.

Dated: January 27, 2026.

Respectfully submitted,

Jeffrey L. Kleinman

Jeffrey L. Kleinman, OSB No. 74372
Attorney for Valley Neighbors
for Environmental Quality

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(O) 541.230.5546

December 30, 2025

Michael Eisele, PE
Environmental Engineer 3
Department of Environmental Quality
Western Region Salem Office
4026 Fairview Industrial Dr SE
Salem, OR 97302

RE: Pre-Enforcement Notice
Valley Landfills Inc.
2025-PEN-10025
02-9502-TV-01
Benton County

Dear Mr. Eisele,

This letter provides a portion of Valley Landfill Inc's (VLI) response to the Department of Environmental Quality's (DEQ) Pre-Enforcement Notice (PEN) sent by you on November 6, 2025. In the PEN on Page 9, DEQ requested VLI to provide corrective actions to the alleged violations cited on Page 8. The information below responds to questions 1 and 2 of the PEN, and VLI will respond with an update to the remainder of the questions under separate cover by the requested due date of February 1, 2026.

1) By Jan. 1, 2026, submit a significant permit modification via YourDEQOnline (YDO) to use drone technology, as approved by EPA in OTM-51, to complete surface emissions monitoring required under 40 CFR Part 63, Subpart AAAA and OAR Chapter 340, Division 239.

VLI remains concerned regarding the feasibility and implementation challenges associated with EPA OTM-51 that we have identified in our prior communications and discussions with DEQ. Until those challenges can be addressed, OTM-51 is not an appropriate monitoring methodology for this site at this time. VLI intends to further evaluate alternative monitoring technologies for compliance with Oregon's state-specific landfill rules, codified at OAR Chapter 340, Division 239, including low-altitude aircraft, alternative drone-based systems, or other emerging methodologies, prior to pursuing any permit modification related to surface emissions monitoring.

However, Valley Landfills, Inc. (VLI) does not believe that a significant permit modification is required to comply with the surface emissions monitoring requirements applicable to 40 CFR Part 63, Subpart AAAA (AAAA) because AAAA does not require the use of OTM-51. To comply with AAAA, the facility will continue to utilize a third-party contractor to conduct surface emissions monitoring by traversing the landfill on a 30-meter grid except for areas with steep slopes or other dangerous conditions, consistent with the requirements of AAAA.

EXHIBIT A

2) By Jan. 1, 2026, submit an operation and maintenance plan for the flare to ensure compliance with 40 CFR 63.1955(f), 40 CFR 63.1955(c), and OAR 340-239-0110(2)(a)(A).

Attached to this letter is our quarterly preventative maintenance form we use to comply with both federal and OAR rules

Please do not hesitate to contact me with any questions.

Sincerely,

A handwritten signature in cursive script that reads "Bret J. Davis".

Bret Davis
General Manager, Coffin Butte Landfill