From:	David Patte
To:	Coffin Butte Landfill Appeals
Subject:	Written Testimony on New Evidence: DEQ Pre-Enforcement Notice (Nov. 6, 2025)
Date:	Tuesday, January 27, 2026 9:16:08 AM
Attachments:	Patte Testimony re DEQ PEN.pdf Exhibit A_Patte.pdf

Please find my testimony attached. In case these attachment don't go through I have copied my testimony to this email, below. Thank you,

David Patte
37655 Zeolite Hills Rd
Corvallis Ore 97330

BEFORE THE BENTON COUNTY BOARD OF COMMISSIONERS January 26, 2026
LU-24-027 – Coffin Butte Landfill Expansion

Written Testimony on New Evidence: DEQ Pre-Enforcement Notice (Nov. 6, 2025)

Chair and Commissioners:

My name is David Patte. I am a neighboring property owner and a participant in LU-24-027. I submit this testimony in response to the Board's decision to reopen the record to accept new evidence related to the Oregon Department of Environmental Quality's November 6, 2025 Pre-Enforcement Notice (PEN) concerning the Coffin Butte Landfill. I submit this testimony to ensure that all applicable issues are preserved for further review.

This testimony explains how the DEQ letter bears directly on the applicable approval criteria in Benton County Code (BCC) 53.215, particularly subsections (1) and (2), and why it materially undermines the Board's prior adopted findings and Conditions of Approval related to the "expansion" of the landfill (I demonstrate below that you should also reconsider the applicant's request as a new project, not an "expansion"). Given the deficiencies identified below, and based on the record as it presently stands, the Board cannot make the findings required for approval under the applicable criteria. On reconsideration, denial of the application is therefore the legally appropriate outcome.

By way of context, I wish to briefly describe how the issues addressed in this testimony affect my household and nearby residents. As but one example, on January 13, 2026, my wife submitted an odor complaint to the Oregon Department of Environmental Quality after

observing a visibly low, dense smog-like cloud moving up the Soap Creek Valley from the direction of the Coffin Butte Landfill. The odor was sufficiently intense that it prevented normal outdoor activities on our property for much of the day. This experience is not isolated. Over more than a decade of residence in the Soap Creek Valley, there have been numerous occasions when persistent landfill-related odors and emissions have interfered with ordinary use and enjoyment of our property. These recurring conditions provide real-world context for the concerns raised below regarding landfill gas control, reliance on self-monitoring, and complaint-based enforcement. We are encouraged that you are reviewing your decision.

I. The DEQ Pre-Enforcement Notice Is New, Authoritative Evidence That Demonstrates Serious Interference with Adjacent Uses

The DEQ letter provides new independent, expert confirmation that landfill gas emissions and associated odors concerns from the record are valid, and that the Planning Commission's findings that air-quality impacts seriously interfere with adjacent uses were well-founded. The Planning Commission was legally in its rights to deny per *H2D2 Properties, LLC v. Deschutes County, 80 Or LUBA 528 (2019)* (LUBA headnote: "*Local governments are not required to condition approvals rather than deny noncompliant applications*.") But just as important, where new evidence materially alters the factual basis for a decision, the appropriate course of action is to reevaluate whether approval criteria are met.

BCC 53.215(1) requires a finding that the proposed use will not seriously interfere with uses on adjacent property or the character of the area. The DEQ letter directly contradicts any finding that landfill gas emissions and associated odors from Coffin Butte can be assumed to be minor, well-controlled, or reliably monitored:

- EPA documented 61 methane exceedances during the June 23, 2022 inspection, including 21 exceedances above 10,000 ppm methane, while the landfill operator's own monitoring reports reflected only six exceedances during the same period (DEQ PEN at pp. 3–4).

- EPA documented 41 exceedances of 500 ppm or greater during the June 21, 2024 inspection (DEQ PEN at pp. 4–5).

- DEQ found that large portions of the landfill were excluded from required surface emissions monitoring without approval, masking the true extent of landfill gas emissions (DEQ PEN at pp. 2–5).

- DEQ concluded that failures to control landfill gas emissions have "significant environmental and public health impacts," noting that landfill gas includes methane and non-methane organic compounds, some of which are known or suspected carcinogens, and that emissions also affect human welfare through odor (DEQ PEN at p. 9).

These impacts directly affect nearby residents and properties through air quality degradation, odor, and health risk—classic forms of "serious interference" under a land-use compatibility standard. The County has adopted legislative findings and policies in its Comprehensive Plan (2007) requiring the Board's commitment to environmental and public health and safety impacts. Those Findings and Policies include, but are certainly not limited to 6.1.1, 6.1.2, 6.1.4, 6.1.8, 6.3.1, 6.5.4, 6.5.8, and 6.1.d of the Plan. The County's original final decision does not adhere do these commitments.

II. The DEQ Letter Undermines the Reliability of Applicant Self-Reporting

A central theme of the DEQ Pre-Enforcement Notice is that independent EPA and DEQ inspections repeatedly contradicted the landfill operator's self-reported compliance.

Specifically:

- DEQ reviewed surface emissions monitoring reports submitted by the operator and found that required monitoring was not conducted over large areas of the landfill, despite reports indicating compliance (DEQ PEN at pp. 2–5).

- DEQ reviewed the operator's monthly landfill cover inspection reports from January 2021 through September 2024, which consistently reported "no issues" or "no holes," while EPA's June 2024 inspection documented numerous holes and vegetation growing through the landfill cover (DEQ PEN at p. 7).

This pattern is directly relevant to the land-use decision. The County's prior findings and Conditions of Approval rely heavily on self-reporting, future monitoring, and regulatory compliance to conclude that impacts will not rise to the level of serious interference. The conditions first of all, per *Stop the Dump Coalition v. Yamhill County, 79 Or LUBA 459 (2019)*, are required to specifically address how they are effective as remedies. The County has not done so. Furthermore, the DEQ letter shows that self-reporting has not been reliable even under existing permit obligations.
From a land-use perspective, evidence that self-reported compliance has been materially inaccurate undermines confidence that future conditions of approval will function as effective mitigation.

It is also important to note that the Board's reliance on self-monitoring, as well as complaint-based enforcement, and future plans or reports extends beyond landfill gas impacts. These tenuous processes form the basis for many findings and Conditions of Approval addressing noise, and groundwater raising broader questions about the legal basis and standing of those determinations.

III. Undue Burden on Public Services and Enforcement / Inadequate Oversight and A Flawed Proposed Oversight Framework

BCC 53.215(2) requires a finding that the proposed use will not impose an undue burden on public improvements, facilities, utilities, or services. The DEQ letter documents a pattern of noncompliance requiring substantial and repeated governmental intervention.

The DEQ letter documents a pattern of noncompliance that has required substantial and repeated governmental intervention and poses an undue burden on public services, including:

- Multiple EPA and DEQ inspections and technical reviews (DEQ PEN at pp. 1–5). The second EPA inspection was not routine: instead of an announced visit by one EPA Inspector, it was an unannounced inspection by an EPA Air Quality Enforcement team, led by a Senior Enforcement Officer and accompanied by another enforcement officer from Washington DC, and accompanied by five representatives from Oregon DEQ (Clean Air Act Partial Compliance Evaluation Inspection Report, EPA, Region 10, June 21, 2024, p. 6);

- Referral to DEQ's Office of Compliance and Enforcement (DEQ PEN at pp. 1–2);

- Potential civil penalties assessed on a per-day basis (DEQ PEN at p. 10);

- Mandatory corrective actions involving redesign and expansion of the gas collection and control system, third-party inspections, and accelerated compliance timelines (DEQ PEN at pp. 5–6, 9–10).

This level of oversight represents an undue public-service burden at the existing landfill scale. A new landfill "expansion" would increase waste volumes, methane generation, and system complexity at a time when baseline compliance has not yet been demonstrated. The PEN highlights the extraordinary technical complexity involved in evaluating landfill gas generation, modeling assumptions, monitoring protocols, and corrective actions — complexity that DEQ itself addresses through specialized staff, federal coordination, and formal enforcement authority. Expecting the County to independently establish methane thresholds, evaluate competing technical interpretations, or audit ongoing compliance would require specialized expertise and sustained resources that local land-use processes and capacity that the County lacks. This reality underscores, rather than cures, the problem identified by the PEN: the application's impacts cannot be meaningfully assessed through ordinary land-use conditions and oversight.

As explained in section VI below, the County cannot substitute regulatory compliance with the County's independent determinations. In Oregon, the standard is that the Board and County must therefore have proper and adequate oversight capabilities at the time it reviews and acts on the application, not at some undefined point in the future.

Here, the conditions of approval are a direct recognition of the large burden placed on the County for monitoring, review and enforcement: they explicitly recognize the deficiency by

calling for future annual Applicant payments to shore up the County's general enforcement authority.

On this point, another legal deficiency is revealed: the conditions of approval, as structured, do not provide a defined oversight framework. They do not establish minimum inspection frequencies, response timelines, contingency measures if monitoring costs exceed estimates, or whether enforcement will be proactive or complaint-driven. Conditions that leave such essential determinations unresolved indicate an incomplete record, not effective mitigation. As stated earlier, per *Stop the Dump Coalition v. Yamhill County, 79 Or LUBA 459 (2019)*, conditions of approval are required to specifically address how they are effective as remedies. The record lacks such analyses and detrminations.

IV. Unresolved Compliance Creates Predictive Uncertainty

The DEQ Pre-Enforcement Notice does not describe isolated or purely historical issues. It documents systemic and unresolved compliance failures that remain subject to further agency review and enforcement.

Specifically, the DEQ letter shows that:

- Required monitoring was not performed as required over multiple years (DEQ PEN at pp. 2–5);
- Corrective actions following methane exceedances were not consistently implemented (DEQ PEN at pp. 3–6);
- The adequacy of the landfill gas collection and control system remains in question due to improper modeling assumptions and undersizing (DEQ PEN at pp. 5–6);
- Compliance pathways remain subject to agency approval and ongoing enforcement (DEQ PEN at pp. 9–10).

This unresolved compliance history creates predictive uncertainty that is directly relevant to BCC 53.215. Where baseline compliance has not been reliably achieved, the County lacks a solid foundation for concluding that an "expanded" landfill will not seriously interfere with adjacent uses or impose an undue burden on public services.

V. Approval Criteria: Conditions of Approval Cannot Cure a Deficient Record

While BCC 53.220 allows conditions of approval to mitigate impacts, conditions of approval should not substitute for missing evidence or defer essential determinations to future studies, monitoring, or redesign. Yet the County's approval, as seen in multiple conditions of approval,

rely heavily on future studies and compliance, self-monitoring, and post-approval conditions. Conditions of approval cannot be used to defer establishing and adopting criteria: "*conditions of approval do not substitute for establishing compliance with applicable criteria; before the County can impose conditions of approval, it must first establish that the criteria can be satisfied." LUBA headnote re: Thomas v. Wasco County, 30 Or LUBA 302 (1996).*

The DEQ Pre-Enforcement Notice demonstrates that the County does not yet know whether the proposed landfill gas collection and control system—at the existing landfill, much less an "expanded" facility—will function as required, or whether the landfill operator can reliably self-monitor and self-report compliance (DEQ PEN at pp. 2–10). The PEN documents unresolved violations, ongoing enforcement, and corrective actions that remain subject to agency approval.

Where compliance with approval criteria is uncertain and contingent on future proof, a conditional use permit should not be granted per *Fernandez v. City of Portland, 73 Or LUBA 107 (2016) ("Where a local government is relying on a particular development or a particular limitation on development to find a relevant approval standard is satisfied, there must be something in place to ensure the relied upon development or limitation will become a reality" LUBA Headnote, Fernandez v. City of Portland).* Conditions of approval that require future solutions or investigations to determine whether impacts can be avoided (especially when current operations have not been shown to avoid impacts) are evidence of an incomplete record, not mitigation. The applicant has not met the Burden of Proof or demonstrated that the proposed use nor the proposed conditions of approval can, in fact, comply with the review criteria. The DEQ PEN therefore undermines the substantial evidence basis for the County's findings under BCC 53.215(1) and (2).

This pattern of flawed reasoning by the County goes beyond air quality concerns. Groundwater impacts for example, are explicitly postponed until years after approval, including:

- Identification of water-bearing zones;
- Determination of which aquifers supply neighboring wells;
- Two years of baseline monitoring;
- A future "final design" that may require altering excavation depth;
- Final approval by a County-retained hydrogeologist before conditions are "met."

These conditions demonstrate that the County does not yet know whether the proposed new landfill (termed "expansion") can avoid interfering with neighboring wells. What evidence in the existing record demonstrates that the new project will not seriously interfere with neighboring wells, when the County requires two years of new data and a future redesign to

determine whether interference can be avoided?

Related to this issue, the new project cannot occur without construction; these construction impacts are foreseeable, prolonged, and intrinsic. A blanket policy of excluding construction impacts is not supported by the text or purpose of BCC 53.215 and reliance on another County's code (as cited by the Applicant in its appeal) does not justify redefining Benton County's Code. In Oregon, this is a legal flaw.

VI. The DEQ Pre-Enforcement Notice Highlights an Unlawful Substitution of Regulatory Compliance for Land-Use Compatibility Analysis

The DEQ Pre-Enforcement Notice also brings into focus a legal flaw in the County's prior decision (currently under reconsideration): treating compliance with DEQ permits and regulations as a substitute for the County's independent determination of "serious interference" under BCC 53.215.

BCC 53.215 is a land-use compatibility standard. While state and federal agencies regulate air quality, compliance with those technical standards does not constitute 'prima facie' evidence of compliance with BCC 53.215. The applicant retains the independent burden of proving that the specific impacts of these emissions—even if within legal limits—do not seriously interfere with the use of adjacent property. Again, we must emphasize *Thomas v. Wasco County, 30 Or LUBA 302 (1996) for guidance: "…the County … must first establish that the criteria can be satisfied." (LUBA headnote)* as supporting guidance for the County on this point (this legal standard is also supported by *Oregon Shores Conservation Coalition v. Coos County, 81 Or LUBA 839 (2020)*, and *Yih v. Linn County, 68 Or LUBA 412 (2013))*.

In addition, while the County deferred air quality and methane concerns to DEQ permitting, DEQ monitoring programs, applicant self-monitoring and self-reporting, or general "compliance with environmental regulations," the DEQ PEN lays bare that such reliance is misplaced. It documents that regulatory compliance has not been reliably achieved and that self-reporting has been materially inaccurate and/or false (DEQ PEN at pp. 2–7).

The Board did not articulate any independent threshold for what level of methane emissions, odor, or air quality impact would constitute "serious interference" under BCC 53.215, nor did it explain how the previously adopted (being reconsidered) Conditions of Approval ensure impacts will remain below such a threshold. Listing conditions without explaining why and how they prevent serious interference is inadequate, as supported by *Stop the Dump Coalition v. Yamhill County, 79 Or LUBA 459 (2019)* (conditions of approval are required to specifically address how they are effective as remedies, my summary). Absent articulated thresholds, reasoning, and a demonstrated evidentiary basis, the County cannot provide a meaningfully reviewable decision.

I recognize that determining what level of methane emissions, odor, or air quality impact

constitutes “serious interference” is a technically complex task that requires specialized expertise, modeling, and judgment. It must also be pointed out that in Oregon this work should be completed under the County’s direction with independent consultants without reliance on “experts” hired by the applicant for the sole purpose of getting the application approved. This observation is not a criticism of County staff or decision-makers.

Rather, it highlights an additional way in which the proposed landfill “expansion” imposes an undue burden on public services as shown in section III. The DEQ Pre-Enforcement Notice demonstrates that even state and federal agencies with primary regulatory authority and technical expertise are still engaged in enforcement, corrective action review, and system redesign. In this context, the County is being asked to approve a major project proposal while implicitly assuming responsibility for interpreting evolving technical data, evaluating compliance disputes, and determining—without the required articulated thresholds as required by Oregon case law noted above—when impacts cross the line into “serious interference.”

Absent clear, objective standards in the findings, the County would be required to make ongoing, case-by-case technical judgments regarding landfill gas impacts and community compatibility. That level of continuing technical oversight exceeds the reasonable scope of local land-use administration and further supports a conclusion that the applicant’s new project would impose an undue burden under BCC 53.215(2).

VII Impact of the DEQ Pre-Enforcement Notice on Applicant Credibility and the County’s Reliance on the Record

The November 6, 2025 Pre-Enforcement Notice (“PEN”) issued by the Oregon Department of Environmental Quality fundamentally alters the evidentiary posture of this application. Beyond identifying serious regulatory violations, the PEN demonstrates that the Applicant’s self-reported information concerning landfill gas control, surface emissions monitoring, odor management, and corrective actions cannot be relied upon as accurate or complete.

As documented in Exhibit A, the record now contains at least sixteen (16) specific instances in which the Applicant made affirmative representations of fact that DEQ has since shown to be false, misleading, incomplete, or materially inaccurate. These include, among other things (see Exhibit A for citations):

- Representations that required surface emissions monitoring was being conducted when large portions of the landfill surface were improperly excluded;

- Representations that methane exceedances were limited in number when EPA inspections documented dozens of exceedances, including extreme concentrations;

- Representations that landfill cover inspections revealed “no issues” or “no holes” when federal inspectors observed widespread cover failures;

- Representations that odor impacts were minimal and controls effective, despite DEQ’s conclusion that uncontrolled landfill gas emissions have had significant environmental and public health impacts; and

- Representations that odor complaint data were comprehensive, despite the Applicant’s failure to disclose hundreds of additional complaints available to it through established County advisory processes.

These are not minor discrepancies or differences of professional opinion. They are affirmative factual representations made by the Applicant to satisfy applicable approval criteria and to support findings that impacts would be minimal, controllable, and compatible with surrounding uses. DEQ’s enforcement findings establish that those representations were unreliable at the time they were made.

I am personally appalled and have been affected, as the general public has, by the misleading and false statements of the applicant during the many years of its public statements and well-funded public relations campaigns. Form a legal decision making framework, I remind you that under Oregon land-use law, an applicant bears the burden of proving compliance with applicable approval criteria through substantial evidence in the record. Where an applicant’s own submissions are shown to be materially inaccurate, a local government may not lawfully continue to rely on those submissions — or on conditions of approval that presuppose their accuracy — to meet that burden.

This credibility failure has broader implications for the application as a whole. The County’s prior findings rely heavily on post-approval monitoring, self-reporting, and regulatory compliance to conclude that impacts will not rise to the level of serious interference or undue burden. The PEN demonstrates that such reliance is no longer reasonable. In Oregon conditions of approval cannot cure a lack of credible baseline evidence, nor can they substitute for demonstrated compliance.

For these reasons, the Board should not limit its reconsideration to the narrow issues addressed in the PEN alone. Credibility issues call into question other portions of the application. Before any further reliance is placed on those representations, the Board must first determine whether the County can lawfully and practically evaluate them without impermissibly shifting the Applicant’s burden of proof onto County staff.

Until that threshold issue is addressed, continued reliance on the existing record would not be

supported by substantial evidence and would not satisfy the requirements of the Benton County Code.

VIII The Proposed Facility Would Function as a Separate, Stand-alone Landfill Unit, with its own Landfill Gas Collection and Control System

The DEQ Pre-Enforcement Notice highlights an obvious point: the current landfill gas collection and control system will be separate from the proposed new system. This brings a related procedural concern that warrants the County's careful consideration. Although the Applicant characterizes the proposal as an "expansion," the record reflects that the proposed facility would function as a separate, stand-alone landfill unit, with its own landfill gas collection and control system, surface emissions monitoring program, leachate collection system, and associated infrastructure. These systems are not extensions of existing systems but new operational components whose proper and effective performance, as described above, have not yet been demonstrated.

Where a proposal introduces new disposal capacity supported by independent operational systems, the County must ensure that the approval criteria and process applied are sufficient to evaluate those systems on their own merits, rather than assuming compliance based on association with an existing facility. Under Oregon law, OAR chapter 340, division 94**,** the siting and permitting of a new municipal solid waste landfill requires state-level review and approval by the Oregon Department of Environmental Quality before County consideration.

IX Conclusion

The November 6, 2025 DEQ Pre-Enforcement Notice is highly relevant, new evidence that directly bears on the Benton County Code approval criteria for LU-24-027. It is not merely evidence of regulatory noncompliance. The PEN materially alters the factual and legal context in which the County must apply BCC 53.215.

For the many reasons cited in this testimony, the Board cannot lawfully re-adopt its prior findings or Conditions of Approval without first addressing the deficiencies identified in this testimony and determining whether the Applicant has met its burden of proof in these matters. Absent articulated reasoning and substantial evidence demonstrating that the approval criteria are satisfied, continued reliance on the existing record would not meet the requirements of the Benton County Code, and the application should not be approved.

Thank you for your careful consideration.

Respectfully submitted,

David Patte

37655 Zeolite Hills Rd.
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While BCC 53.220 allows conditions of approval to mitigate impacts, conditions of approval should not substitute for missing evidence or defer essential determinations to future studies, monitoring, or redesign. Yet the County's approval, as seen in multiple conditions of approval, rely heavily on future studies and compliance, self-monitoring, and post-approval conditions. Conditions of approval cannot be used to defer establishing and adopting criteria: "*conditions of approval do not substitute for establishing compliance with applicable criteria; before the County can impose conditions of approval, it must first establish that the criteria can be satisfied." LUBA headnote re: Thomas v. Wasco County, 30 Or LUBA 302 (1996).*

The DEQ Pre-Enforcement Notice demonstrates that the County does not yet know whether the proposed landfill gas collection and control system—at the existing landfill, much less an "expanded" facility—will function as required, or whether the landfill operator can reliably self-monitor and self-report compliance (DEQ PEN at pp. 2–10). The PEN documents unresolved violations, ongoing enforcement, and corrective actions that remain subject to agency approval.

Where compliance with approval criteria is uncertain and contingent on future proof, a conditional use permit should not be granted per *Fernandez v. City of Portland, 73 Or LUBA 107 (2016) ("Where a local government is relying on a particular development or a particular limitation on development to find a relevant approval standard is satisfied, there must be something in place to ensure the relied upon development or limitation will become a reality" LUBA Headnote, Fernandez v. City of Portland).* Conditions of approval that require future solutions or investigations to determine whether impacts can be avoided (especially when current operations have not been shown to avoid impacts) are evidence of an incomplete record, not mitigation. The applicant has not met the Burden of Proof or demonstrated that the proposed use nor the proposed conditions of approval can, in fact, comply with the review criteria. The DEQ PEN therefore undermines the substantial evidence basis for the County's findings under BCC 53.215(1) and (2).

This pattern of flawed reasoning by the County goes beyond air quality concerns. Groundwater impacts for example, are explicitly postponed until years after approval, including:

- Identification of water-bearing zones;
- Determination of which aquifers supply neighboring wells;
- Two years of baseline monitoring;
- A future "final design" that may require altering excavation depth;
- Final approval by a County-retained hydrogeologist before conditions are "met."

These conditions demonstrate that the County does not yet know whether the proposed new landfill (termed "expansion") can avoid interfering with neighboring wells. What evidence in the existing record demonstrates that the new project will not seriously interfere with neighboring wells, when the County requires two years of new data and a future redesign to determine whether interference can be avoided?

Related to this issue, the new project cannot occur without construction; these construction impacts are foreseeable, prolonged, and intrinsic. A blanket policy of excluding construction impacts is not supported by the text or purpose of BCC 53.215 and reliance on another County's code (as cited by the Applicant in its appeal) does not justify redefining Benton County's Code. In Oregon, this is a legal flaw.

VI. The DEQ Pre-Enforcement Notice Highlights an Unlawful Substitution of Regulatory Compliance for Land-Use Compatibility Analysis

The DEQ Pre-Enforcement Notice also brings into focus a legal flaw in the County's prior decision (currently under reconsideration): treating compliance with DEQ permits and regulations as a substitute for the County's independent determination of "serious interference" under BCC 53.215.

BCC 53.215 is a land-use compatibility standard. While state and federal agencies regulate air quality, compliance with those technical standards does not constitute 'prima facie' evidence of compliance with BCC 53.215. The applicant retains the independent burden of proving that the specific impacts of these emissions—even if within legal limits—do not seriously interfere with the use of adjacent property. Again, we must emphasize *Thomas v. Wasco County, 30 Or LUBA 302 (1996) for guidance:* "*…the County … must first establish that the criteria can be satisfied." (LUBA headnote)* as supporting guidance for the County on this point (this legal standard is also supported by *Oregon Shores Conservation Coalition v. Coos County, 81 Or LUBA 839 (2020)*, and *Yih v. Linn County, 68 Or LUBA 412 (2013))*.

In addition, while the County deferred air quality and methane concerns to DEQ permitting, DEQ monitoring programs, applicant self-monitoring and self-reporting, or general "compliance with

environmental regulations," the DEQ PEN lays bare that such reliance is misplaced. It documents that regulatory compliance has not been reliably achieved and that self-reporting has been materially inaccurate and/or false (DEQ PEN at pp. 2–7).

The Board did not articulate any independent threshold for what level of methane emissions, odor, or air quality impact would constitute "serious interference" under BCC 53.215, nor did it explain how the previously adopted (being reconsidered) Conditions of Approval ensure impacts will remain below such a threshold. Listing conditions without explaining why and how they prevent serious interference is inadequate, as supported by *Stop the Dump Coalition v. Yamhill County, 79 Or LUBA 459 (2019)* (conditions of approval are required to specifically address how they are effective as remedies, my summary). Absent articulated thresholds, reasoning, and a demonstrated evidentiary basis, the County cannot provide a meaningfully reviewable decision.

I recognize that determining what level of methane emissions, odor, or air quality impact constitutes "serious interference" is a technically complex task that requires specialized expertise, modeling, and judgment. It must also be pointed out that in Oregon this work should be completed under the County's direction with independent consultants without reliance on "experts" hired by the applicant for the sole purpose of getting the application approved. This observation is not a criticism of County staff or decision-makers.

Rather, it highlights an additional way in which the proposed landfill "expansion" imposes an undue burden on public services as shown in section III. The DEQ Pre-Enforcement Notice demonstrates that even state and federal agencies with primary regulatory authority and technical expertise are still engaged in enforcement, corrective action review, and system redesign. In this context, the County is being asked to approve a major project proposal while implicitly assuming responsibility for interpreting evolving technical data, evaluating compliance disputes, and determining—without the required articulated thresholds as required by Oregon case law noted above—when impacts cross the line into "serious interference."

Absent clear, objective standards in the findings, the County would be required to make ongoing, case-by-case technical judgments regarding landfill gas impacts and community compatibility. That level of continuing technical oversight exceeds the reasonable scope of local land-use administration and further supports a conclusion that the applicant's new project would impose an undue burden under BCC 53.215(2).

VII Impact of the DEQ Pre-Enforcement Notice on Applicant Credibility and the County's Reliance on the Record

The November 6, 2025 Pre-Enforcement Notice ("PEN") issued by the Oregon Department of Environmental Quality fundamentally alters the evidentiary posture of this application. Beyond identifying serious regulatory violations, the PEN demonstrates that the Applicant's self-reported information concerning landfill gas control, surface emissions monitoring, odor management, and corrective actions cannot be relied upon as accurate or complete.

As documented in Exhibit A, the record now contains at least sixteen (16) specific instances in which the Applicant made affirmative representations of fact that DEQ has since shown to be false, misleading, incomplete, or materially inaccurate. These include, among other things (see Exhibit A for citations):

- Representations that required surface emissions monitoring was being conducted when large portions of the landfill surface were improperly excluded;

- Representations that methane exceedances were limited in number when EPA inspections documented dozens of exceedances, including extreme concentrations;

- Representations that landfill cover inspections revealed “no issues” or “no holes” when federal inspectors observed widespread cover failures;

- Representations that odor impacts were minimal and controls effective, despite DEQ’s conclusion that uncontrolled landfill gas emissions have had significant environmental and public health impacts; and

- Representations that odor complaint data were comprehensive, despite the Applicant’s failure to disclose hundreds of additional complaints available to it through established County advisory processes.

These are not minor discrepancies or differences of professional opinion. They are affirmative factual representations made by the Applicant to satisfy applicable approval criteria and to support findings that impacts would be minimal, controllable, and compatible with surrounding uses. DEQ’s enforcement findings establish that those representations were unreliable at the time they were made.

I am personally appalled and have been affected, as the general public has, by the misleading and false statements of the applicant during the many years of its public statements and well-funded public relations campaigns. Form a legal decision making framework, I remind you that under Oregon land-use law, an applicant bears the burden of proving compliance with applicable approval criteria through substantial evidence in the record. Where an applicant’s own submissions are shown to be materially inaccurate, a local government may not lawfully continue to rely on those submissions — or on conditions of approval that presuppose their accuracy — to meet that burden.

This credibility failure has broader implications for the application as a whole. The County’s prior findings rely heavily on post-approval monitoring, self-reporting, and regulatory compliance to conclude that impacts will not rise to the level of serious interference or undue burden. The PEN demonstrates that such reliance is no longer reasonable. In Oregon conditions of approval cannot cure a lack of credible baseline evidence, nor can they substitute for demonstrated compliance.

For these reasons, the Board should not limit its reconsideration to the narrow issues addressed in the PEN alone. Credibility issues call into question other portions of the application. Before any further reliance is placed on those representations, the Board must first determine whether the County can lawfully and practically evaluate them without impermissibly shifting the Applicant's burden of proof onto County staff.

Until that threshold issue is addressed, continued reliance on the existing record would not be supported by substantial evidence and would not satisfy the requirements of the Benton County Code.

VIII The Proposed Facility Would Function as a Separate, Stand-alone Landfill Unit, with its own Landfill Gas Collection and Control System

The DEQ Pre-Enforcement Notice highlights an obvious point: the current landfill gas collection and control system will be separate from the proposed new system. This brings a related procedural concern that warrants the County's careful consideration. Although the Applicant characterizes the proposal as an "expansion," the record reflects that the proposed facility would function as a separate, stand-alone landfill unit, with its own landfill gas collection and control system, surface emissions monitoring program, leachate collection system, and associated infrastructure. These systems are not extensions of existing systems but new operational components whose proper and effective performance, as described above, have not yet been demonstrated.

Where a proposal introduces new disposal capacity supported by independent operational systems, the County must ensure that the approval criteria and process applied are sufficient to evaluate those systems on their own merits, rather than assuming compliance based on association with an existing facility. Under Oregon law, OAR chapter 340, division 94**,** the siting and permitting of a new municipal solid waste landfill requires state-level review and approval by the Oregon Department of Environmental Quality before County consideration.

IX Conclusion

The November 6, 2025 DEQ Pre-Enforcement Notice is highly relevant, new evidence that directly bears on the Benton County Code approval criteria for LU-24-027. It is not merely evidence of regulatory noncompliance. The PEN materially alters the factual and legal context in which the County must apply BCC 53.215.

For the many reasons cited in this testimony, the Board cannot lawfully re-adopt its prior findings or Conditions of Approval without first addressing the deficiencies identified in this testimony and determining whether the Applicant has met its burden of proof in these matters. Absent articulated reasoning and substantial evidence demonstrating that the approval criteria are satisfied, continued reliance on the existing record would not meet the requirements of the Benton County Code, and the application should not be approved.

Thank you for your careful consideration.

Respectfully submitted,

David Patte
37655 Zeolite Hills Rd.
Corvallis OR 97330

Date: January 26, 2026

Exhibit A Credibility Chart: Applicant Representations vs. DEQ Findings (Patte, David Testimony, January 26, 2026)

LU-24-027 – Coffin Butte Landfill Expansion

#	Applicant Statement (Verbatim)	Source & Citation	DEQ Contradiction (Verbatim / Summary)	Why It Matters Legally
1	"Monthly visual inspections… reported 'no issues' or 'no holes'."	*Applicant landfill cover inspection reports, as quoted by DEQ. DEQ PEN p. 7*	EPA/DEQ inspectors observed "many holes in the landfill cover and a significant number of trees growing through the plastic cover."	Direct false self-reporting. Undermines credibility of self-monitoring relied upon by the County and COAs.
2	"VLI currently employs aggressive methods… including surface emissions monitoring (SEM)."	*A0030_011525_BOP_Jan15 BurdenOfProof.pdf, p. 37*	"Since at least 2022, VLI has failed to conduct SEM as required, consistently excluding large areas of the landfill." (DEQ PEN pp. 2–5)	Material misrepresentation. Applicant claims SEM as mitigation while DEQ documents systemic SEM noncompliance (Class I violation).
3	"There has not been a significant impact to human health and environment related to landfill gas or odors."	*A0030_011525_BOP_Jan15 BurdenOfProof.pdf, p. 37 (quoting Weaver)*	"Failure to control landfill gas emissions… has significant environmental and public health impacts." (DEQ PEN p. 9)	Direct contradiction on severity of impacts — central to BCC 53.215(1).
4	"Odor-control methods have been effective… complaints… have been minimal."	*A0030_011525_BOP_Jan15 BurdenOfProof.pdf, p. 38*	DEQ documents uncontrolled methane exceedances, SEM failures, cover integrity failures, and enforcement referral (DEQ PEN pp. 2–10).	Misleading minimization of impacts; County cannot rely on "effective controls" where DEQ documents systemic failures.
5	SEM areas labeled "exempt due to high vegetation."	*Applicant SEM maps/reports, as quoted by DEQ (DEQ PEN p. 4)*	"DEQ has not approved SEM exemptions due to vegetation; landfills must maintain vegetation to allow SEM."	Applicant implied regulatory approval where none existed — misrepresents compliance status.
6	SEM areas labeled "active area."	*Applicant SEM reports, as quoted by DEQ (DEQ PEN p. 4)*	"Area excluded does not comport with the definition of 'working face' and was not approved."	Shows Applicant unilaterally redefining compliance obligations.
7	SEM areas labeled "exempt due to steep slope / health and safety."	*Applicant SEM reports, as quoted by DEQ (DEQ PEN p. 4–5)*	DEQ states no such exemption was approved and notes those same areas were monitored in later quarters.	Demonstrates inaccurate justification for avoiding required monitoring.

8	SEM results reported 6 exceedances (June 2022).	*Applicant SEM report, as summarized by DEQ (DEQ PEN p. 3)*	EPA found 61 exceedances, including 21 >10,000 ppm methane (DEQ PEN pp. 3–4).	Shows systematic under-reporting; self-reported data unreliable for land-use findings.
9	SEM results reported 11 exceedances (March 2024).	*Applicant SEM report, as summarized by DEQ (DEQ PEN p. 3)*	EPA found 41 exceedances ≥500 ppm (DEQ PEN p. 4).	Reinforces pattern of materially inaccurate self-reporting.
10	"Maintain high standards of… regulatory compliance."	*A0030_011525_BOP_Jan15 BurdenOfProof.pdf*, p. 19	DEQ identifies multiple Class I violations, enforcement referral, and potential civil penalties (DEQ PEN pp. 8–10).	Broad credibility claim contradicted by formal enforcement record.
11	"As described in Exhibits 12 and 13, VLI currently employs aggressive methods for control of landfill gas, including an extensive system of landfill gas collection and control, surface emissions monitoring ('SEM'), and daily odor monitoring."	*ValleyLandfillsInc_CUP_R EVISEDApplication_Recd_10-30-24_Part1.pdf, p. 29 (Benton County pagination) ValleyLandfillsInc_CUP_R EVISEDA…*	DEQ found that, since at least 2022, VLI failed to conduct SEM as required and excluded large portions of the landfill surface without approval; EPA documented far more exceedances than VLI reported. (DEQ PEN pp. 2–5, 3–4, 5)	Affirmative misrepresentation of present compliance; SEM is cited as mitigation, but DEQ documents systemic noncompliance.
12	"A review of odor complaints over the past 20 years demonstrates that VLI's odor-control methods have been effective… complaints to DEQ, the landfill, and local authorities have been minimal."	*ValleyLandfillsInc_CUP_R EVISEDApplication_Recd_10-30-24_Part1.pdf, pp. 29–30 ValleyLandfillsInc_CUP_R EVISEDA…*	DEQ concluded that failure to control landfill gas emissions has 'significant environmental and public health impacts,'including impacts to human welfare from odor. (DEQ PEN p. 9) DEQ Letter	Misleading minimization of impacts; directly contradicts DEQ's enforcement findings relevant to "serious interference."
13	"CBLF has developed and implemented a site-specific odor management plan that includes… conducting surface emissions monitoring (SEM)… conducting routine odor patrol inspections… and taking action when odors are detected/reported."	*ValleyLandfillsInc_CUP_R EVISEDApplication_Recd_10-30-24_Part9.pdf, pp. 82–83 ValleyLandfillsInc_CUP_R EVISEDA…*	DEQ found required SEM was not conducted, remonitoring was skipped or inadequately documented, and monthly inspections repeatedly reported "no issues" while EPA observed holes and cover failures. (DEQ PEN pp. 5–7)	Shows self-monitoring and self-reporting were unreliable; undermines reliance on future monitoring conditions.
14	"Although the Project is a proposed 'expansion,' the nature of landfill operations means the Project	*ValleyLandfillsInc_CUP_R EVISEDApplication_Recd_10-30-24_Part1.pdf, p. 29*	DEQ found the existing gas collection and control system may be undersized or improperly designed and requires corrective action and possible redesign	Claim assumes effective baseline compliance that DEQ has shown does not exist; expansion increases gas generation before compliance is established.

	will not result in a material expansion of odor-producing uses."	*ValleyLandfillsInc_CUP_REVISEDA…*	before compliance can be demonstrated. (DEQ PEN pp. 5–6, 9–10)	
15	"CBLF has developed and implemented… confirming implementation of applicable odor minimization measures."	*ValleyLandfillsInc_CUP_REVISEDApplication_Recd_10-30-24_Part9.pdf, p. 83* *ValleyLandfillsInc_CUP_REVISEDA…*	DEQ documented repeated failures to take required corrective action following exceedances and failures to document repairs and dates of repair as required. (DEQ PEN pp. 5–6) 56e727b4-462d-404b-9b64-6221a3d…	Undermines claim that mitigation measures are being implemented and verified as represented.
16	In its Application the Applicant represents that the odor complaints cited in the study were all the odor complaints available: "SCS reviewed available data from recent odor complaints (January 2020 through August 8, 2024) to identify any specific patterns. Of the 70 odor complaints with exact dates reported, over half occurred during the winter season (see Table 2). Of the 50 complaints with the time of day reported, the peak complaint time was 8:00 am (see Figure 8). See Figure 9 and Figure 10 for odor complaint locations that provided an address or an intersection."	*Applicant's Exhibit 14, Record ID BC016_062625_SSR_APPEXHIBITS, p. 940.*	The Applicant had many more odor complaints available to it, however, as its Environmental Manager is a sitting member of Benton County's Disposal Site Advisory Committee, which fields comments and concerns about the landfill and publishes them every year in its Community Concerns Annual Report. As the Applicant well knows, this is the established route for public complaints in Benton County, having logged over 800 complaints from 2021-2024. Members of the public added the 2021, 2022, 2023 and 2024 CCARs to the Record in April 2025 (Record IDs BOC1_T0298_10092025_SFTP_EKLUND_Ken, pp. 567-8, p. 576, p. 674, p. 723; T0443_04212025_PURCELL_ Rachel Chair Benton County Disposal Site Advisory Committee). The Applicant did not revise its characterization of the number and content of community odor complaints in response; it had over a year to do so.	Reinforces pattern of under-reporting, misrepresentation, and misleading minimization of impacts