From: decoulombe@peak.org
To: Coffin Butte Landfill Appeals
Cc: "David Coulombe"
Subject: Open Record Testimony
Date: Tuesday, January 27, 2026 12:45:30 PM
Attachments: Exhibit 1.pdf
Exhibit 2.pdf
Reconsideration.argument.final version.pdf

Please accept the attachments as my Open Record Week One submission.

David Coulombe

Coffin Butte Landfill (Company 4125)
28972 Coffin Butte Road Corvallis OR 97330
(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.

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,

Bret Davis
General Manager, Coffin Butte Landfill

Coffin Butte Landfill (Company 4125)
28972 Coffin Butte Road Corvallis OR 97330
(O) 541.230.5546 www.republicservices.com

To: Benton County Administrator Rachel McEneny

Re: Republic Services letter to ODEQ, dated December 30

Dear Ms. McEneny,

On December 30, 2025, Valley Landfills, Inc. (VLI), responded to a Pre-Enforcement Notice (PEN) issued by the Oregon Department of Environmental Quality (ODEQ) to the Coffin Butte Landfill that requested certain information and various corrective actions.

Unfortunately, an article in the Salem Statesman-Journal mischaracterized our response to the PEN as stating that we "won't comply" with ODEQ. The article also suggested the landfill remains in noncompliance with numerous regulatory requirements.

These claims are false.

To be sure, VLI intends to comply with the requests in the PEN, and we have been working diligently and cooperatively with ODEQ to determine the best course of action in doing so.

With regard to the request for drone monitoring of surface methane emissions, some additional context may be helpful in understanding VLI's response to the PEN. The concern we expressed was limited to the reference in the PEN to an "other test method" that U.S. EPA has designated "OTM-51." By referencing "OTM-51," ODEQ's request was limited to a single monitoring alternative sold by just one company, Sniffer Robotics' "SnifferDRONE," because that is the only monitoring device upon which OTM-51 is based.

Recognizing the potential constraints associated with requiring use of just one vendor's monitoring device, VLI's letter to DEQ stated that "VLI remains concerned regarding the feasibility and implementations challenges associated *with EPA OTM-51*," adding that "until those challenges can be addressed, *OTM-51* is not an appropriate monitoring methodology for this site at this time."

In short, if forced to contract with just one company, the requirement to use OTM-51 could limit the use of newer technologies in the future. It could also limit use of well-established monitoring techniques, such as walking the landfill in a grid-like format to take the necessary measurements, that remain required by federal regulations.

Because of these concerns, VLI indicated that it 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 to surface emissions monitoring."

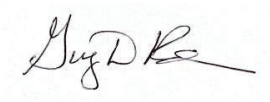
After all, just last year Oregon Gov. Tina Kotek signed into law Senate Bill 726, sponsored by State Sen. Sara Gelser Blouin, which specifically requires Coffin Butte Landfill to monitor methane using advanced technology, like drones, planes, and satellites. VLI did not oppose that law and fully intends to comply

with it, confirming that we do not oppose the use of drone monitoring technology, even though we have concerns regarding the one version of that technology covered by OTM-51.

Importantly, according to EPA, the Other Test Methods (OTC) category within which OTM-51 falls includes methods that have not yet been subject to the federal rulemaking process. Although OTCs have been reviewed by EPA's Air Emission Measurement Center and have been found to be potentially useful for some applications, they are not required by EPA or state or local programs. Therefore, the OTM-51 method referenced by ODEQ is not required by law but rather just one possible alternative to the required monitoring methods.

We hope this additional information is helpful in better understanding the context that is missing from the Salem Statesman-Journal article on VLI's response to the PEN. We continue to work with ODEQ to implement the various corrective actions requested, and we would be happy to discuss further if you have any questions as that work proceeds.

Sincerely,



Ginger D. Richardson
Director, Public Affairs
Republic Services

cc: Anne Thwaits

January 27, 2026
First Open Record Submission

Delivered via email to:
Benton County Board of Commissioners through
landfillappeals@bentoncountyor.gov

Case: LU-24-027

Dear Board of Commissioners:

I submit this written statement on the date set out above in response to the County's decision to reconsider this land use case. This response is guided by the procedures set out in Oregon Revised Statutes generally and the following specifically:

> "When a local governing body, planning commission, hearings body or hearings officer reopens a record to admit new evidence, arguments or testimony, any person may raise *new issues which relate to* the new evidence, arguments, testimony or criteria for decision-making which apply to the matter at issue." ORS 197.797(7). Emphasis added.

My goal is two-fold: 1) raise new issues which relate to agency publication of the November 6, 2025 Department of Environmental Quality's (DEQ) Pre-Enforcement Notice (PEN) and any other new evidence submitted during this reconsideration hearing; and 2) alert the Board to decision-making tools available by law to assist in resolving new issues and to evaluate the Applicant's evidence, its statements of fact and its argument in light of DEQ's publication of the PEN. As that document discloses, the Applicant has not been forthcoming and has not accurately detailed its compliance efforts and current standing with respect to its regulatory obligations. Those inaccuracies are significant, substantial and cast a disturbing cloud of doubt over the Applicant's proffered studies, data and argument such that the Board is now clearly unable to make a substantial evidence finding in favor of the Applicant as regards the applicable CUP criteria.

In the light most favorable to the Applicant, it has misjudged the timing of the PEN's release. In the light less favorable to the Applicant, it has deliberately

attempted to obscure or obfuscate[1] the extent of its regulatory and permit noncompliance and the studies the Applicant advanced in its effort to demonstrate satisfaction of CUP criteria. That attempt is not without consequences.

In its original decision, the County found the Applicant failed to satisfy the relevant CUP criteria. Consequently, the County imposed multiple conditions of approval–some proposed by the Applicant and others by County Planning Staff. Regarding reliance on those conditions of approval, the County found:

> "Currently, County monitoring of Conditions for all approved conditional use permits relies on complaints, *Applicant self-reporting*, and, for landfill activities, DSAC Disposal Site Advisory Committee oversight. Speculative and/or unadjudicated matters regarding compliance or lack of compliance with existing Conditions that apply to the existing landfill did not inform the Board's decision." County Decision Findings pg.7. Emphasis added.

In short, the County expressly found that it may rely on the Applicant to self-report its landfill activities to ensure the conditions of approval are met while rejecting as "speculative" public allegations concerning the Applicant's current lack of compliance. Applicant activities include compliance obligations with DEQ regulations and County imposed conditions. The Board's reliance on Applicant self-reporting is demonstratively misplaced. The Applicant's several serious violations at the land fill site are now manifest. When an Applicant hides the ball, omits important information or makes untrue statements, how then should the Board view the Applicant's evidence-studies, testimonial assertions and argument?

Response: You *must* distrust and reject evidence that is unreasonable. Where conflicting evidence and testimony exists, LUBA will set aside a local government's choice, if it appears to LUBA that a reasonable person could not decide as the decision-maker did, based on all of the evidence in the record. *Younger v. City of Portland*, 305 Or 356, 360, 752 P2d 262 (1988). Moreover, a reasonable person could rely on conditions to ensure that an approval standard will be satisfied, but only if there is substantial evidence in the record that it is feasible

[1] It is also possible the Applicant is simply arrogant and holds no intention to accurately report its conduct.

for the proposed use to satisfy those conditions. *Kenton Neighborhood Assoc. v. City of Portland*, 17 Or LUBA 784, 805 (1989). Similarly, Oregon law (ORS 197.835(9)(a)(C)) provides that LUBA must reverse or remand a land use decision that is "not supported by substantial evidence in the whole record." *Westside Rock v. Clackamas County,* 51 Or LUBA 264, 294 (2006). There is not "substantial evidence that there will be no unreasonable interference with neighboring uses [when] [t]he findings do not explain how an ODA license prevents unreasonable interference." *Coats v. Columbia County*, 2021 Ore. Land Use Bd. App. LEXIS 20

"Reasonableness" is the mandate within the "substantial evidence" construct which means evidence a reasonable person would rely on in making an important decision. *Dodd v. Hood River County*, 317 Or 172, 179 (1993).

It is patently unreasonable to rely on Applicant self-reporting when the self reporting is untrue, veiled, omits important content or when it discloses the Applicant's unwillingness to comply with DEQ regulations and permit obligations. Applicant self reporting and contradictory statements in its Application and hearing materials do not withstand scrutiny and lack sufficient credibility for the County to rely on as substantial evidence. Every study advanced by the Applicant to demonstrate criterion satisfaction is rendered invalid where the study is premised on assumptions predicated on the Applicant's compliance with EPA or DEQ regulatory guidelines and mandates.

Like the reasonableness prong in this quasi-judicial hearing process, Oregon law also provides instructions to assist fact-finders in the judicial forum.[2] Here's some relevant law: "That a witness false in one part of the testimony of the witness may be distrusted in others [testimony]." ORS 10.095(3). Oregon Evidentiary law also provides that "[e]vidence willfully suppressed would be adverse to the party suppressing it." ORS 40.135(1)(c). Here, the suppressing party is the Applicant. What other adverse evidence is the Applicant suppressing?

Contrary to the Applicant's declarations of its compliance with its permit obligations and related state and federal regulations made during these

[2] Quasi-judicial evidentiary evaluation is in nature and effect consistent with that of a civil action. That is, a search for accuracy and correctness based on truthfulness. That is, substantial.

proceedings, DEQ notified the Applicant of seven Class I violations. It appears those violations have existed for a significant time frame. Applicant's failure to correctly and accurately report its activities is exposed in the PEN. More examples of inaccurate reporting may arise during DEQ's subsequent review of records it demands from the Applicant. By way of example only, DEQ engineer Mike Eisele reports:

> 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." PEN-7.[3]

Logic holds that those plants did not sprout at 3 feet in height overnight. They grew consistently season after season and were readily visible and apparent. It appears that inaccurate, untrue, misleading, or obfuscating statements are modus operandi for the Applicant.[4]

Given the Applicant's reliance on assumptions of compliance with DEQ regulations as the foundation for its numerous studies, the exposure of untrue and inaccurate reporting by the Applicant, should lead the Board to find, as Oregon law directs, that the Applicant has not met its burden to produce accurate and true substantial evidence and upon reconsideration deny the application.

The Board's reliance on the Applicant to adhere to regulatory guidelines and

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[3] Oregon law supports finding the DEQ inspectors correct and accurate in their duties and investigative results as set out in the PEN because the law presumes: "Official duty has been regularly performed." ORS 40.135(1)(j).

[4] Alternatively, Applicant is incompetent in its investigations.

obligations as if the Applicant were a good partner is misplaced. In responding to the PEN, the Applicant's General Manager writes:

> 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. VLI December 30, 2025 letter to DEQ. Exhibit-1.

As the PEN expressly provides, VLI cannot be trusted to accurately report is findings. Nor is using a purported safety exclusion to avoid actually grid testing consistent with best practices.

Additionally, the Applicant's representative writes:

> In short, if forced to contract with just one company, the requirement to use OTM-51 could limit the use of newer technologies in the future. It could also limit use of well-established monitoring techniques, such as walking the landfill in a grid-like format to take the necessary measurements, that remain required by federal regulations.
>
> Because of these concerns, VLI indicated that it 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 to surface emissions monitoring." Ginger Richardson's undated letter to County Administrator Rachel McEneny. Exhibit-2.

Do Commissioners observe the irony and obfuscation patent in the above quote? If not, let me make it manifest. On the one hand VLI states that it is not required to use an emerging technology- the drone use; on the other hand it refuses to comply with DEQ because it does not want its hands tied because that could "limit the use

of new technologies in the future." The emerging new drone technology rejected by VLI is the emerging new technology!

In addition, how should the Board evaluate the Applicant's written or oral self-reporting statements concerning the application criteria and the Applicant's stated compliance with current conditions of approval obligations, federal and state permit requirements and related regulations?

The short answer: with "distrust." Much like the search for reasonableness under the substantial evidence standard, Oregon law provides this guidance in the civil judicial forum:

> "That evidence is to be estimated, not only by its own intrinsic weight, but also according to the evidence which it is in the power of one side to produce and of the other to contradict; and, therefore,
>
> That if weaker and less satisfactory evidence is offered when it appears that stronger and more satisfactory was within the power of the party, the evidence offered should be viewed with distrust." ORS 10.095(7)(8).

Stated differently, the Applicant is the party with the obligation to demonstrate it meets the relevant County land use criteria; and when it failed (as demonstrated in these proceedings) then the Board should view Applicant evidence and argument with distrust.

Applicant's studies and related argument is rendered invalid as its foundational "we comply with DEQ regulations" mantra has been dismantled by the PEN. Consequently, Applicant evidence lacks substance sufficient to qualify as statutory "substantial evidence" necessary for the Board to approve the application.

The Valley Neighbors for Environmental Quality and Safety (VNEQS) January 27, 2026 letter to the Board sets out several instances explaining where new information in the PEN invalidates Applicant's odor study: Coffin Butte Landfill 2024 Expansion Application Odor Dispersion Modeling Study, SCS, Feb 2025, rev. June 2025. A flawed study provides no basis to support a substantial evidence finding. I will avoid redundancy and direct the Board to VNEQS January 27, 2026

written open record submission and its evidence and arguments set forth under the headings "Flaws #1 through 6" for more particularized evidence and arguments.[5]

Because the Applicant is the party with the power to know *how* it purportedly attempts to comply with its regulatory obligations of the County, State and Federal regulatory bodies and the results of those attempts, but failed to provide accurate/true/correct evidence, the Board should distrust the whole of the Applicant's testimony, written arguments and "evidence."

In short, the Board should find, on reconsideration, the Applicant has not met its burden of production and proof. Correspondingly, the Board should deny the Application.

In its original decision, the Board adopted Conditions of Approval because the Applicant had not satisfied BCC 53.215(1). One relevant Finding states, in part, that:

> The Board adopts Conditions P1-6(A, C), OP-11, and OP-13 requiring maintenance of required local, state, and federal permits, as well as compliance with state and federal regulations relating to methane, PFAS, and air quality. Decision-49.

As Mr. Eisele states:

> "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."

[5]Additional testimony by Opponents also demonstrate issues related to technical studies and reporting by the Applicant and its consultants.

The County has adopted legislative findings and policies 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 Benton County shall provide by example and leadership a commitment to air, water, and land resource quality by demonstrating sustainable, "best management practices" in all County operations and capital projects.

6.1.2 In cooperation with appropriate agencies, Benton County shall manage its air, water and land resources to insure their protection, conservation, restoration, or enhancement.

6.1.4 In reviewing land use actions, Benton County *shall evaluate* potential impacts on air, surface water, groundwater, noise and glare levels, and land quality, where possible utilizing existing studies and prioritizations such as the County's Environmental Assessment Priority List. Appropriate *steps shall be taken* to minimize degradation.

6.1.8 Benton County shall place a high priority on public education and enforcement related to environmental rules and regulations.

6.3.1 Benton County shall develop and implement programs necessary to meet or exceed air quality standards. This effort *will include* but not be limited to: considering air quality implications when reviewing capital improvement projects and *making land use decisions*, developing and implementing controls, reducing vehicle miles traveled (VMT), and monitoring and promoting proper burning practices.

6.5.4 Benton County *shall provide for the safe*, efficient, and sanitary storage, collection, transportation, and *disposal of solid waste*.

6.5.8 Benton County *shall assure safe*, accessible, and environmentally sound disposal of solid waste at the Coffin Butte Regional Sanitary Landfill. *Emphasis* added.

Comprehensive Plan Findings:

6.1.d DEQ administers many air and water quality site and non-site specific programs that affect land use. To maintain consistency between DEQ regulations and Benton County land use decisions, DEQ is consulted before land use decisions are made. Also, an applicant for a DEQ air or water discharge permit *must first demonstrate* that the proposed use is consistent with the comprehensive plan and zoning ordinance. *Emphasis* added.

Despite the Comprehensive Plan Policies mandating otherwise and the Finding quoted above, the Board adopted in its original final decision improper interpretations and the contradictory improper finding below. That board finding provides:

Board Findings: "As cited above, the June 2025 Staff Report included testimony from adjacent neighbors, opponents, and ENRAC relating to air quality. In addition, five owners or residents on adjacent property submitted related testimony into the BOC record[21]. The Board understands opponent concerns about landfill gas emissions. However, the Board concurs with the Applicant that County land use review is not the appropriate forum to evaluate and control air quality in relation to concerns such as methane concentrations or public health risk. The landfill must comply with DEQ air quality regulations, which directly address these concerns. DEQ reviews air quality complaints and can require enforcement action in cases of violations. The Board also notes recent legislation (2025 SB 726 directing changes to ORS 468A with an operative date of January 1, 2027) that requires additional rulemaking and air quality monitoring specific to municipal solid waste landfills in Benton County. The Board adopts Conditions P1-6(A, C), OP-11, and OP-13 requiring maintenance of required local, state, and federal permits, as well as compliance with state and federal regulations relating to methane, PFAS, and air quality." Decision-49.

Consistency with DEQ regulations and Benton County land use code provisions is a *requirement* of the County's own adopted Comprehensive Plan. The Board's Finding above (and Board interpretations in the original decision) are contrary to its own legislative findings and policies. The embedded interpretation (and all similar interpretations) ignores legislative policy and findings. The Board

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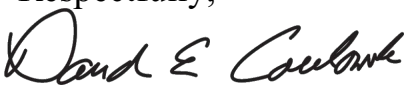
[21] https://www.bentoncountyor.gov/wp-content/uploads/LU-24-027/BoardOfCommissioners/Written%20Testimony/BOC1_T0152_10062025_Email_BRISKEY_William.pdf

should remedy this error in this reconsideration hearing.

Respectfully,



David Coulombe
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Corvallis, Or 97330