

LU-24-027 IN-PERSON TESTIMONY SUBMITTAL COVER SHEET

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MONITORING IS NOT ENFORCEMENT

We are a nation of rules. If you do not obey rules, there are consequences. That's because without consequences, rules are meaningless.

Here is a rule:

THE RULE: You have to pay your taxes

MONITORING THE RULE: You have to file a tax return

OR ELSE: You can pay fines or be imprisoned

The County is trying to make rules about how the landfill operates

Here is a proposed rule:

THE RULE: There have to be live screening trees along Highway 99

MONITORING THE RULE: The Applicant will defray the cost of a county employee to monitor this and other rules and report on whether the rules have been complied with

OR ELSE: ???

Imagine this:

COUNTY EMPLOYEE: "That row of trees is dead. You need to replace them all."

THE LANDFILL: "I don't think they're dead, come back later"

COUNTY EMPLOYEE: "They're definitely dead"

THE LANDFILL: "I have hired an arborist from Cleveland who says they're just resting"

COUNTY EMPLOYEE: "I am charged with deciding if they are dead and they are dead. You are required to replace them"

THE LANDFILL: "No"

So how does the County enforce a condition of approval if the applicant does not cooperate? The applicant suggests revoking the Conditional Use Permit. But the landfill isn't a food truck. You can't hang a "closed for health violations" sign on the door and open back up in a week after the exterminator has been by.

The landfill produces 110,000 gallons of toxic leachate a day. It can catch on fire. It produces vast quantities of methane. The threat of revoking the Condition of Approval as a method for enforcing violations is an empty threat. Requiring the County to take over all of the maintenance of the landfill during a zoning violation revocation would be an undue burden on the County.

What is the other way of enforcing a condition of approval? The applicant suggests a lawsuit, and Mr. Condit refers to Mingo v Morrow County, a lawsuit that took more than five years to resolve. But requiring County Counsel to file a lawsuit as an enforcement mechanism is also an undue burden on the County. And taking five years to resolve a complaint when the projected use is only five years is impractical and unreasonable.

Without ENFORCEMENT, without an "OR ELSE" that is sufficiently motivating, there is no mitigation of adverse impacts. Compliance is voluntary.

We have seen how the Applicant complies when compliance is voluntary, or when there is ambiguity, and that is that the applicant frequently chooses to not comply.

In the past few years, the Applicant has already disagreed with regulations proposed by OSHA (worker safety), by the DEQ (the flare containment), and the EPA (methane emissions). In some of these actions, the regulators have issued fines or warning letters (OSHA and DEQ, the EPA investigation is ongoing).

The applicant is already required to have screening trees along Highway 99 (a requirement of the 1965 Highway Beautification Act), but are there screening trees? Evidence has been submitted that there are no screening trees that keep landfill operations from being seen from the highway. Has it been adjudicated that there are no screening trees? It has not. But you can see for yourself, with your eyes, that landfill operations are not screened from Highway 99.

There's an old saying in Tennessee that says, "fool me once, shame on you...fool me twice, you can't get fooled again."