

**From:** [Jeffrey L. Kleinman](#)  
**To:** [Benton Public Comment](#)  
**Subject:** File No. LU-24-027 (Republic Services/Valley Landfills Inc.)  
**Date:** Monday, May 5, 2025 9:50:37 PM  
**Attachments:** [MEMORANDUM OF VALLEY NEIGHBORS FOR ENVIRONMENTAL QUALITY AND SAFETY 5-5-25.pdf](#)

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Hello,

Attached for filing and delivery to the Planning Commission in the above matter please find the Memorandum of Valley Neighbors for Environmental Quality and Safety. Kindly confirm receipt.

Thank you very much.

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May 5, 2025

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

**TO:** Benton County Planning Commission  
**FROM:** Jeffrey L. Kleinman  
**RE:** File No. LU-24-027 (Republic Services/Valley Landfills Inc.)

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**I. INTRODUCTION**

I represent Valley Neighbors for Environmental Quality and Safety (“Valley Neighbors”) in this proceeding. Valley Neighbors comprises a large group of property owners and residents in the area surrounding the proposed landfill expansion site, including but not limited to the Soap Creek Valley and Tampico community. The members of Valley Neighbors will be directly and adversely affected by the proposed expansion.

The comments presented here summarize some of the legal obstacles to approval of this application which the applicant has failed to overcome. A number of the members of the affected community who will testify orally, in writing, or both, have the professional and personal expertise to flesh out the issues in detail. Some will be filing (or attempting to file)

media which we strongly encourage you to view, as county rules apparently do not allow them to be played or displayed during hearings.<sup>1</sup>

For all the reasons set out below and those to be adduced on the record of this proceeding, the applicant has not come close to meeting its burden of proof under the county's approval criteria. Simply stated, this application must be denied.

## **II. GENERAL COMMENTS REGARDING STAFF REPORT; ADDITIONAL CONSIDERATIONS**

Valley Neighbors offer the following comments:

1. What is the applicant's rush? It has just converted the Knife River quarry site on its property to the west of its existing operation to landfill use. The applicant has 12-14 years of capacity at that location.

2. The staff report reflects a diligent effort, with excellent graphics, and a clear understanding of the issues facing the county. Valley Neighbors agree with its ultimate conclusion that this application must be denied.

3. At the same time, staff did not have the benefit of the written and oral testimony of Valley Neighbors and others, which reinforces the grounds for denial and adds others with a similar degree of importance.

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<sup>1</sup>Media containing video and audio are essential to forming an understanding of the impacts of this proposal. Staff has indicated then any media submissions such as thumb drives will be discarded. For the record, Valley Neighbors object to this "rule" and procedure, as they interfere with the substantial rights of parties to present their case. Such materials are necessary to understand the impacts of the proposal before you.

4. It is not just the southward movement of Republic's operation that will cause the increased, adverse impacts in question. Rather, that movement will serve to sustain a dump operation which would otherwise be greatly constrained in scope. Thus, this proposal cannot be characterized as one for a preexisting use, inherently accepted as part of the character of the area. The character of the area entails a large operating landfill north of Coffin Butte Road that is close to shutting down. Its past role in establishing the character of the area cannot be "grandfathered" into the present time, much less the future. To the extent that you may be advised to the contrary, we strongly (but respectfully) disagree. The application must be treated as one for a brand new landfill, because that is precisely what it is.

5. The county can impose as many conditions of approval as it wishes. Unfortunately, the applicant's existing operation has a solid track record of noncompliance with conditions, and the county has a solid track record of failing to enforce conditions.

6. Valley Neighbors have two initial comments concerning the work product of Benton County Talks Trash (BCTT):

(a) Just to be clear, BCTT's report was "accepted"—deemed received—by the county's board of commissioners. It was not *adopted*, much less in a manner which would make BCTT's proposed interpretations of the Benton County Development Code binding upon you, or upon the board itself in any appeal hearing.



(b) The legal subcommittee of BCTT, which recommended certain of those interpretations, included four attorneys. Three of those attorneys were not neutral participants, but have consistently favored landfill expansion. Two work for Republic, its in-house attorney, Holly Doyle, and its local counsel, Mr. Condit. The other is the county counsel, Mr. Croney.

7. If you are inclined to be persuaded that approval of this application would not result in “serious interference,” please picture yourselves as homeowners or farmers at or near the expansion site. We can nearly guarantee that you would find that the proposed operation seriously interferes with your use and enjoyment of your property, as well as with the character of the area. Under no circumstances would you move to or wish to live anywhere near it, regardless of depressed property prices. You will hear testimony that the prospect of an expansion causes potential buyers to back out of home and farm purchases in the area. Being unable to sell your property comprises “serious interference.”

### **III. CONDITIONAL USE APPROVAL STANDARDS-BCC 53.215**

The general Conditional Use approval criteria provide:

**53.215 Criteria.** The decision to approve a conditional use permit shall be based on findings 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; and

(3) The proposed use complies with any additional criteria which may be required for the specific use by this code.

**A. WHAT IS THE MEANING OF “SERIOUSLY INTERFERE”  
UNDER BCC 53.215(1)?**

This is discussed at pages 18-19 of the staff report. Valley Neighbors agree at least in part with the interpretation propounded there, especially that the proposed use causes “more than an inconvenience or irritation but is a lesser threshold than rendering the uses on adjacent property impossible.” *Id.* at 19. Of course, little short of an armed attack would render such uses impossible, so it is important to find a way to draw the line.

The following discussion is a bit lengthy, but reflects our best effort to get there.

For words not otherwise defined in the Code, LUBA and the Oregon courts look to their plain meaning, quite specifically as set out in *Webster’s Third New International Dictionary* (unabridged ed 2002). Webster’s defines “seriously” as “in a serious manner or vein : to a serious extent \* \* .” *Webster’s Third New Int’l Dictionary*, 2073. In turn, “serious” has several definitions depending upon the context in which it is used. The applicable ones are these:

4a : IMPORTANT, SIGNIFICANT \* \* \*

**c. : such as to cause considerable distress, anxiety, or inconvenience**  
\* \* \*

*Id.* (Emphasis added.)

LUBA has discussed the meaning of “significant” in the related context of statutory conditional uses in farm and forest zones. Those uses are subject to the requirements of the “significant impacts” test set out in ORS 215.296(1):

(1) A use allowed under ORS 215.213 (2) or (11) or 215.283 (2) or (4) may be approved only where the local governing body or its designee finds that the use will not:

(a) Force a **significant** change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

(b) **Significantly** increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

(Emphasis added.)

In *Stop the Dump Coalition v. Yamhill County* (“SDC”), 72 Or LUBA 341, 359

(2015), another case dealing with the proposed expansion of a landfill, LUBA examined the meaning of “significant”:

Because the term "significant" is undefined, and of common usage, it is permissible to consult dictionary definitions. The most pertinent definition of "significant" in Webster's Third New International Dictionary (2002), 2116, appears to be "3 a : **having or likely to have influence or effect : deserving to be considered**[" Because ORS 215.296(1) is framed in the negative (the applicant must demonstrate that the proposed use "will not" force a significant change, etc.), it seems appropriate to consider related antonyms such as the term "**insignificant**," which Webster's defines in relevant part as "**e : of little size or importance**[" *Id.* at 1169.

(Emphasis added.)

The above discussion sets out the most accurate and appropriate definition for the Planning Commission to apply. In summary, “SERIOUSLY”=TO A SERIOUS EXTENT. “SERIOUS”=SIGNIFICANT=LIKELY TO HAVE INFLUENCE OR EFFECT : DESERVING TO BE CONSIDERED=NOT OF LITTLE SIZE OR IMPORTANCE.

Regardless of the definition or interpretation of “seriously interfere with,” the evidence will be replete with sufficient evidence to show that the applicant has not met its burden of proving the absence of serious interference with “uses on adjacent property, with the character of the area, or with the purpose of the zone.” At the same time, it would be a disservice to both the community and the Development Code to artificially constrain the effect of this approval standard.

## **B. INTERFERENCE WITH USES ON ADJACENT PROPERTY**

One can assume for the sake of argument that, as staff states, “adjacent property” includes the adjacent and nearby properties mapped on page 20 of the staff report. It would be nothing short of bizarre for conditional use criteria to be concerned only with directly abutting properties, especially in light of the size, scale, and diverse intense impacts of the use proposed here. At the same time, properties as to which serious interference can be demonstrated should be included within the definition of adjacent property, in order to give effect to the purpose and intent of the conditional use criteria.

The staff report discusses adjacent properties in the Exclusive Farm Use zoning district. Blowing waste, especially plastics, and the attraction of gulls to the landfill who then

root around in and uproot newly planted crops, were found to be a significant impact in SDC. As just one example of such impact, if every speck of plastic is not assiduously removed by a hay farmer, and any amount of it is picked up by their harvesting equipment and thus mixed into the harvested hay, it will render the crop unsaleable. It also takes very little plastic to knock the farmer's equipment out of commission.<sup>2</sup>

Further, owners and residents of adjacent properties will provide evidence of the impacts they would endure under this proposal, especially as the landfill comes ever closer to them and gets much larger—and the more methane is emitted and the more leachate is generated. The impacts include truly intrusive and disruptive noise and odor impacts, and wind-blown garbage which will require constant clean up by property owners. These are impacts which neither the members of the Planning Commission nor attorneys, consultants,

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<sup>2</sup>Note that BCC 60.220, discussed later in the staff report, addresses this issue directly:

**“60.220 Conditional Use Criteria.**

(1) A use allowed under BCC 60.205 or 60.215 may be approved only upon findings that the use:

(a) Will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands \* \* \*."

LUBA's holding in SDC is directly applicable to the Planning Commission's analysis under this provision.

county staffers, or BCTT participants would abide for even a single day. When you get right down to it, this is the reality of “talking trash.”

### **Noise**

Dump operations are proposed to be conducted from 5:00 AM to 5:00 PM, Monday through Saturday and noon to 5:00 PM on Sunday. (However, movement of heavy equipment regularly starts by 4:00 A.M., to prepare the fill for the arrival of trash.) It would be difficult to overstate the extent to which landfill-related noises will “seriously interfere with uses on adjacent property.” Hundreds of heavy diesel trucks hauling waste to the site, climbing the working face of the fill, traveling over the fill itself, and braking down the slope and departing from the site will produce a nearly constant heavy roar and squeal, most intrusive during the warmer months when residents are trying to enjoy being outdoors on their property. The dumping operation itself will produce the regular sounds of vehicle hydraulics and clanging tailgates as loads are dumped. Perhaps worst of all will be the high-intensity chirping of back up beepers (whether or not outfitted to be triggered only by proximity to obstacles<sup>3</sup>), on both the haul trucks and landfill equipment such as bulldozers. Noise impacts alone will render adjacent properties nearly unlivable.

With respect to noise, staff found as follows:

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<sup>3</sup>The applicant proposes to require proximity-generated buzzers for their own equipment. These devices produce an alarm-clock-like buzzing which is louder than the traditional beeping.

The applicant identified the closest noise-sensitive properties (residential uses) and evaluated potential noise impacts on these uses. The applicant did not evaluate noise impacts on other adjacent properties at greater distances. Staff concurs with the applicant's reasoning that if noise does not seriously interfere with close noise-sensitive uses, it will not seriously interfere with noise-sensitive uses farther away, as noise diminishes over distance.

As noted by the applicant, the cited DEQ Noise Rule does not appear to be directly and entirely applicable to the proposed application. However, staff concurs with the applicant's use of that DEQ regulation to set a threshold for noise increase to "seriously interfere" with noise-sensitive uses.

However, as noted in MFA findings above, the proposal appears to exceed the DEQ regulatory noise threshold proposed for use by the applicant to evaluate consistency with this standard.

In the absence of a proposed solution to meet identified noise impacts, staff recommends denial of the application due to noise impacts on adjacent noise-sensitive uses.

Valley Neighbors generally agree with staff's findings. However, we would reinforce them with the following modifications:

(1) Even hypothetical compliance with DEQ noise standards, which are effectively unenforceable in any event<sup>4</sup>, may seriously interfere with uses on adjacent property. The proposed conditional use and the disturbing sounds it will generate are simply incompatible with adjacent residential uses, and even with the outdoor activities of small farm operators who have placed comments into the record.

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<sup>4</sup>Sadly, this is putting it very mildly. The applicant's representative testified on May 1 that DEQ no longer conducts enforcement. DEQ in fact stopped updating noise regulations in 1991, which is when it ceased noise enforcement. The applicant is not constrained by DEQ regulations.

(2) The science of acoustics does not lend itself to straight-line calculations. For example, based upon the height of the fill at any given time, varying atmospheric conditions, and the occasionally sheltering effect of the fill itself, properties further away may suffer greater impacts than “the closest noise-sensitive properties.” Thus, the applicant did not meet its burden of proof when it only evaluated potential noise impacts on those properties and their uses, and not on other properties within the as-defined adjacent area.

(3) The applicant is only able to exercise some semblance of control over its own vehicles. The vehicles of other haulers and private customers will be entirely out of their control. Assurance of compliance with any relevant or agreed noise standards will be impossible.

### **Odor**

With specific regard to odor impacts, staff found as follows:

\* \* \* Staff has two general concerns with the applicant’s analysis:

1. Odor-sensitive uses. The analysis does not appear to identify adjacent uses that are likely to be more sensitive to odor impacts. For example, a residential use is likely to be more sensitive to odor impacts than a farmed field. Locations of odor-sensitive uses are not clearly defined in the odor analysis or mapping, and the potential impact on these uses is not specifically evaluated. Of special note, there may be odor-sensitive uses within the boundary area identified in the applicant’s odor analysis.

2. As identified in the MFA engineering response, several technical elements of the analysis appear to be inadequately supported.

Due to these concerns, and the lack of options for conditions to mitigate these concerns, staff recommends denial of the application.



Staff Report at 33. The evidence placed in the record will strongly support your staff's determination.

In addition, commissioners should not assume that some community members would be unaffected by or benefit from this proposal because the landfill and its working face would be further away than before. If the current fill (and the expansion into the quarry to its west) reach full capacity and this application is not approved, then the impacts other than residual fumes and odors (which are supposed to be controlled in the first place) would for the most part disappear. That is the baseline condition you must measure against, not the supposed baseline of an operating dump.

You have been presented with testimony that the applicant and county promised and planned that the landfill use would be temporary ever since the first CUP for a landfill in the Forest Conservation zone was granted in 1973. Afterward, it was to have been capped, and revegetated, so as to return the parcels on which it was located to the original pastoral character of the area. There has never been a provision for the landfill to be an ever-growing, permanent operation. The commitment to fully and permanently cap and close the landfill and restore the site to its original condition reflecting the pastoral character of the area, is part of the county's only duly adopted Solid Waste Management Plan (the 1977 Plan, a copy of which is attached as Exhibit A). This commitment has been made repeatedly but never fulfilled. It was contained in the 1983 zone adoption and change, and revalidated in every single land use decision since that time that addressed landfill operations, in 1994, in

2001, in 2003, and most recently in the 2021 CUP proposals.

One characteristic that can be drawn from the preexisting operation, though, is the applicant's manner of operating a landfill. In this regard, please be aware that the voluminous application materials on file do not disclose that Republic's Pollyannaish description of its methane emissions overlooks an ongoing action by the US Environmental Protection Agency. (Please see the recap attached as Exhibit B.) Simply stated, the EPA does not believe Republic's numbers and has the dump under investigation.

This reflects the way this operator operates. Leaking malodorous, unhealthy methane (that also contains airborne PFAS and many other air pollutants as described by the applicant during its May 1 testimony) onto adjacent properties will interfere with all uses on those properties, and with the character of the area (however "area" is defined).

### **Visual Impacts**

While perhaps not as impactful on its adjacent properties as would have been the applicant's 2021 proposal on its affected properties to the north, the new mountain of garbage will nonetheless have a dramatic visual impact on the nearby properties to the south. . The applicant proposes to plant trees to screen the visual impacts. The main problem with this is that screening the landfill is already a Condition of Development for the zone (as well as a requirement of the 1967 Highway Beautification Act). But the current landfill operator has never been able to adequately screen a 500-foot tall artificial landform with "proposed trees" that might reach 15 feet in height by the time the expansion is full. There is no indication

that this will change. The operator has not capped and revegetated a closed cell since the mid-1990's. Instead, it covers cells with unsightly, deteriorating tarps which can be seen for miles. This conduct too will never change. The applicant acknowledges that even if the proposed vegetative screening is installed and maintained, the new landform made of trash "may be visible." The applicant also states that expanding the landfill will "reduce \* \* \*visual impacts \* \* \* caused by the current operation" which, under prior Conditions of Development, are already required. What are we to make of the applicant's suggestion that it will now belatedly, voluntarily comply, after the passage of 50 years?

Note also that the "artist's rendering" of "visual impacts" depicts the landfill mass in a green color. The landfill mass is in fact the colors of a patchwork of decaying tarps. Thus, the new topology of trash should be depicted in its current unnatural colors.

### **C. INTERFERENCE WITH THE "CHARACTER OF THE AREA"**

The "area" in question covers considerably more territory than "adjacent properties." In spite of alternative characterizations offered by the applicant, the character of the area surrounding the proposed fill site is pastoral and considerably more quiet and free of industrial noises and landfill debris and odors than it would be if this application were approved. There is even a nearby wildlife refuge, the E. E. Wilson Wildlife Area, to the east, and a public hiking trail to the north which will have direct views of the 59-acre parcel. The use and enjoyment of both will suffer interference due to landfill noise and odors. The applicant's tree-planting proposal, even if implemented and duly maintained over time, will not mitigate

these impacts. By definition, moving the fill operation south of Coffin Butte Road will seriously interfere with the character of the area to the south.

You will receive direct first-person testimony and evidence with respect to the proposal's serious interference with the character of the area. The discussion of noise and odor impacts above applies to the surrounding area as well, as those witnesses will explain. Valley Neighbors propose that you rely upon the actual testimony placed in the record to determine the boundaries of the relevant "area" under the Development Code.

### **Visual Impacts**

The applicant first proposes to strip the 59-acre parcel of all its vegetation and topsoil, then dig a 155-foot hole in the side of the geographic feature that is the ridge, fill the hole (below the water table) with garbage, and then pile more garbage atop what previously were the natural contours of the hillside. It is possible that preparing the site to accept trash will actually have more of a visual impact than filling it with trash will (the applicant has not provided Benton County with a timeline for site preparation), so it is appropriate to consider the visual impacts of site preparation in addition to the impacts of the operating fill as well as its impacts after final closure.

The area south of Coffin Butte Road currently lacks the view of the giant trash pile the applicant proposes to erect. Even if the height of that pile is lower than would have been the height of the one proposed for the area north of Coffin Butte Road in 2021, its visual impacts

will nonetheless seriously interfere with the character of the newly affected area. Under your code, this impact cannot be glossed over.

#### **D. FINDINGS OF THE PLANNING COMMISSION IN DENYING THE 2021 APPLICATION (LU-21-047)**

The applicant's 2021 conditional use application was different in scope from this one, especially in seeking to close and fill over Coffin Butte Road.<sup>5</sup> However, many of the other impacts would be quite similar and are directly applicable to this application. There are other ways to say the same thing and reach the same result, but the Planning Commission took a great deal of time and care in crafting its findings of denial. We do not feel a need to reinvent the wheel, and thus set out the most relevant ones here:

##### **Uses on adjacent property:**

Many residents of the area testified that the odor and noise has continually gotten worse over the years. Some testified that they have to seek shelter inside to avoid the noise and smell. They warn that the levels expected in the future will affect their rural residential uses. Some farmers have testified that getting workers to work in the stench has been an issue.

Odor: Methane emission rules do not capture the impacts to the character and use of the area because many people testified that the smell inhibits them from going outside and enjoying the use of their property. Property owners within miles of the site stated they could smell the landfill. The current mitigation of an earthen cap over cells does not mitigate smell and smell reflects emissions of other gases such as Volatile Organic Compounds (VOCs) and hydrogen sulfide. The same mitigation is proposed for the

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<sup>5</sup>Valley Neighbors believe that may still be the plan. If the proposed expansion is approved, it is not at all inconceivable that the county would apply (to itself) to vacate the road so that Republic would own and could fill over the right-of-way. It is not impossible that this could be carried out without significant public scrutiny or review. Thus, this application could well be a Trojan horse.

expansion and if it currently does not mitigate the odor then it cannot be used as a mitigation for the future and be expected to minimize the concern.

Bad air quality: People living in areas with poor air quality does pose serious interference with livability. Risk of health concerns is likely with the landfill expansion; enough so nearby residents speak out about it. Some residents point to increasing cancer clusters in their neighborhood and suggest that poor air quality may be responsible. One nearby resident pointed to studies in Europe that tied poor air quality in the proximity of landfills to bad health issues. The applicant noted they cannot control all of the releases of VOCs or hydrogen sulfide and these gases are understood to be potent carcinogens. The applicant did not address the long-term effects of those gases in varying concentrations in different weather situations but the Planning Commission certainly heard from people that they can smell these.

Noise: The noise study contracted by the applicant has been criticized as faulty and inadequate. Proposed mitigations do not seem feasible and such conditions couched as "whenever feasible" or "if permitted by safety conditions" are not stringent enough. Further concern of noise from banging truck gates, loud noises from unloading, was not addressed. Point noises are often the most debilitating and background noise is easier to live with. \* \* \*

Much of the applicant's response to these issues is to rely on subsequent review and approval by Oregon Dept. of Environmental Quality (DEQ); however, there is no ability for the Planning Commission to review the situation after DEQ's approval to ensure that DEQ's standards were adequate to prevent the proposed use from seriously interfering with uses on adjacent property.

**Conclusion: The proposed use does seriously interfere with uses on adjacent property.**

**The character of the area:**

[We cite only the relevant portion of the findings here, which would be directly related to the southward march of the fill. The evidence presented to you will demonstrate those impacts upon such properties.]

\* \* \* Residents of the area point to the change in the character of the area. \* \* \*

\* \* \* The livability of the area because of noise, odors, and the visibility of the garbage pile will continue to degrade.

Benton County File No. LU-21-047, Planning Commission Findings at 2-3.

#### **D. SERIOUS INTERFERENCE WITH THE PURPOSE OF THE FC ZONE**

The purpose of the Forest Conservation zone is set out in BCC 60.005. The relevant subsection is set out below, with the most directly relevant language italicized:

Forest Conservation Zone.

##### **60.005 Forest Conservation Zone.**

(1) The Forest Conservation Zone shall conserve forest lands, promote the management and growing of trees, support the harvesting of trees and primary processing of wood products, and *protect the air, water, and wildlife resources in the zone. Resources important to Benton County and protected by this chapter include watersheds, wildlife and fisheries habitat, maintenance of clean air and water,* support activities related to forest management, opportunities for outdoor recreational activities, and grazing land for livestock. Except for activities permitted or allowed as a conditional use, non-forest uses shall be prohibited in order to minimize conflicts with forest uses, reduce the potential for wildfire, and protect this area as the primary timber producing area of the County.

As staff points out:

The FC zone conditional use criterion BCC 60.220(1)(c) requires consistency with BCC 53.215. As discussed above, staff does not consider BCC 53.215 criteria to be met with respect to noise and odor impacts; therefore, the proposal also is not consistent with the purpose of the FC zone.

Staff Report at 46.

We concur with that portion of staff's findings. We would also point out that the LS classification was created so that landfills would not be located in FC zones. Hence, the

proposed siting on FC parcels of accessory uses which would be part of the landfill operation would subvert the intent of the county's zoning scheme. Note also that landfill "buffers" are not a by-right use in the FC zone, and are not allowed at all in the RR zoning district.

The only parcel in the applicant's ownership that is currently permitted for landfill "buffer" is the 59-acre parcel that the applicant proposes to put a new landfill on. This is the buffer between existing landfill operations, which are slated to continue for the next 12 years, and the RR-10 and FC parcels with residences on them to the east, west, and south. A landfill cannot "buffer" itself. The 59-acre parcel was zoned LS in 1983 to provide visual/noise/odor screening from adjacent parcels, and that is its current function. Without rezoning existing rural residential parcels to LS, or obtaining Conditional Use Permits on FC parcels for landfill "buffering," this use is not compatible with surrounding existing uses.

#### **IV. BCC 53.215(2) AND OTHER CRITERIA RELATING TO TRAFFIC AND THE APPLICANT'S TRAFFIC IMPACT ANALYSIS; DRAINAGE AND LEACHATE MANAGEMENT**

Returning to the Conditional Use criteria of BCC 53.215, subsection (2) requires the applicant to prove:

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



In this regard, the staff report discusses both traffic impacts and drainage and leachate management issues.

The applicant's TIA seems to have withstood staff and consultant scrutiny thus far. However, it is not clear that the TIA and its reviewers understood that the Knife River quarry operation on land leased from Republic had ceased. Republic has now prepared that portion of its property for landfill use, and commenced to fill it. That use will have traffic impacts which are substantially different from and more intense than those generated by Knife River. The defects in the applicant's TIA are separately addressed in a submittal from Mark Yeager.

Considerable testimony will be placed in the record with respect to drainage and leachate management. The record will show that the applicant has not demonstrated that it can or will construct and operate a compliant landfill. Additionally, none of the applicant's studies—not traffic, nor noise, nor odor—takes into account the impact of removal of 3,500,000 tons of material from a topographic feature, the relocation of that material to the stockpile across the road, and the eventual removal of the material from the stockpile to some remote location to be determined in the future. (The applicant has not shared the details of this operation with county staff.) The impacts of site preparation and operation must be weighed and considered when the process will be as extensive as is the case here.

## V. CONDITIONAL USE CRITERIA UNDER BCC 60.220

BCC 60.220 applies in this case and provides in material part:

### **60.220 Conditional Use Criteria.**

(1) A use allowed under BCC 60.205 or 60.215 may be approved only upon findings that the use:

(a) Will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands; \* \* \*

This is essentially the language of ORS 215.296(1), which sets out the “significant impacts” test and was interpreted by the Oregon Supreme Court in SDC. Again, the Supreme Court interpreted “significant” in this context as follows:

Because the term "significant" is undefined, and of common usage, it is permissible to consult dictionary definitions. The most pertinent definition of "significant" in *Webster's Third New International Dictionary* (2002), 2116, appears to be "3 a : **having or likely to have influence or effect : deserving to be considered[.]**" Because ORS 215.296(1) is framed in the negative (the applicant must demonstrate that the proposed use "will not" force a significant change, etc.), it seems appropriate to consider related antonyms such as the term "**insignificant,**" which *Webster's* defines in relevant part as "**e : of little size or importance[.]**" *Id.* at 1169.

(Emphasis added.) This provides the definition and interpretation which are binding upon the county here.

The staff report concurs with the applicant's characterization:

The new or relocated elements that are proposed on the FC-zoned lands are an 1,800-square-foot employee building and parking, access road modifications, the relocation of leachate ponds, leachate loadout, leachate sump, an outbound scale, portions of the perimeter landfill road, cut activities for landfill, and a shop/maintenance area to support the landfill. These elements will slightly reduce the amount of land that is available for farm and forest uses \* \* \*.

Staff Report, 52-53.

Staff then concludes:

Staff concurs with the applicant that farm and forest uses have operated on and adjacent to an active landfill use on this site for decades. In the absence of contradictory information, as of the writing of this staff report staff sees no evidence the proposal will force a significant change in, or significantly increase the cost of, accepted farm and forest practices.

*Id.* at 53.

This conclusion fails to take into account the movement of the applicant's operation toward the south, and the farm impacts which will occur there. In fairness, staff did not have "contradictory information" at the time the staff report was prepared. However, farmers will submit contradictory evidence into this record. That evidence is also likely to be highly relevant to your consideration under the general Conditional Use criteria of BCC 53.215. As we have discussed, this would be a new landfill. While it will be closer to some farms than is the fill north of Coffin Butte Road, the Commission must also take into account impacts on other affected farms in light of the fact that the existing northerly site will shrink and then close, which would otherwise eliminate its impacts but for the opening of this new, proposed fill.

## **VI. BCC 99.225-DEVELOPMENT ACTIVITIES IN WETLANDS**

With respect to these criteria, staff states:

On-site are a Freshwater Emergent Wetland, a Freshwater Pond, and Freshwater Forested/Shrub Wetland. Benton County notified DSL of the complete application on March 20, 2025, following the 58-day extension requested by the applicant (Exhibit BC4). The County did not receive a response from DSL.

Staff Report at 66.

DSL's failure to respond is not the fault of the applicant or staff. Nonetheless, receipt of a response should be required before this application can be approved. Then, if there is somehow an otherwise approvable application, it may (or may not) be possible to craft appropriate conditions based upon DSL's comments.

## **VI. CONCLUSION**

For all the reasons set out above and in the staff report, and adduced in the written and oral testimony before you, the applicant has not met its burden of proof to show compliance with Benton County's approval standards. Accordingly, this application must be denied.

Respectfully submitted,

*Jeffrey L. Kleinman*

Jeffrey L. Kleinman  
Attorney for Valley Neighbors for  
Environmental Quality and Safety

# Waste Control Systems

INCORPORATED

P. O. BOX NUMBER ONE  
CORVALLIS, OREGON 97330  
(503) 928-1241

March 16, 1977

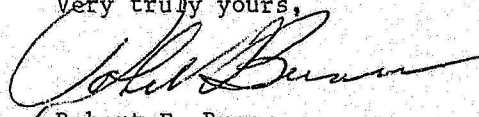
Benton County Planning Commission  
Benton County Courthouse  
Corvallis, OR 97330

Dear Commissioners:

Enclosed is a Solid Waste Management Plan for Benton County.

This report presents a program for developing a systematic, feasible approach to solid waste utilization. We believe the approach presented in this report allows flexibility that will benefit the residents of Benton County now and in the future. Our active participation in solid waste management allows us to keep abreast of new technology and implement them as they become economically worthwhile.

Very truly yours,



Robert E. Bunn  
Vice-President

cc: Benton County Commissioners  
Ron Minor, Chairman, Benton County Solid Waste Advisory Committee  
Grace Phinney, Environmental Quality Commission, DEQ  
Elizabeth Frenkle, Benton County League of Women Voters  
Ernest Schmidt, Solid Waste Director, DEQ  
Russell Fetrow, DEQ  
Verner Adkinson, DEQ  
Linn County Commissioners  
Polk County Commissioners  
Marion County Commissioners

## EXHIBIT A

SOLID WASTE MANAGEMENT PLAN  
BENTON COUNTY, OREGON

Prepared for:

BENTON COUNTY PLANNING COMMISSION

Per Sjogren, Chairman  
Jack Gates  
Herbert Frolander  
Mark McNabb  
Jean Nath  
Rosetta Venell  
John Beardsley  
James Park

By

WASTE CONTROL SYSTEMS, INC.  
CORVALLIS, OREGON

March 1977

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### INTRODUCTION

The purpose of this report is to familiarize the Planning Commission members of Benton County and its residents with our plans, objectives and goals to achieve an efficient and economical total resource recovery program.

The recent awareness of need for the conservation of energy, raw materials and natural resources has led to the conclusion that total resource recovery will soon become an American way of life. To achieve such a goal, an understanding of the solid waste streams involved must be explored. The volumes, densities, compositions and potential market values are of tremendous importance. The areas of collection, transportation, disposal of the putrescible materials, and the processing of the recoverable wastes into a form that is marketable requires a professional understanding of solid waste management.

Therefore, it is hoped the following report will demonstrate Waste Control Systems, Inc.'s program and interest and expertise for better serving Benton County and the surrounding communities in the Willamette Valley.



### GOAL

Our long-range organizational goal is to achieve total resource recovery. It is hoped this can be accomplished by expanding our present activities to a comprehensive, flexible, economic program that meets the solid waste needs of Benton County and is consistent with Regional and State plans.

### THE PLAN ABSTRACT

As part of the goal, Waste Control Systems, Inc. has completed an engineering feasibility study for a Benton County solid waste resource recovery plant.

Unlike other parts of our country which have been faced with higher cost of fuels, the Benton County area presently has an over-abundant supply of wood wastes. Therefore, the economics of a solid waste processing facility for the recovery of a refuse derived fuel (RDF) is not presently feasible. However, a plan has been developed, based on the present "state of the art" in solid waste management technology. This plan can be adapted quickly to a change in fuel market conditions.

### PROGRAMS

Our objective is to implement a resource recovery program in accordance with Local, State and Federal legislation. It will be done within the framework developed by the Chemeketa Region and the new Federal Resource Conservation and Recovery Act of 1976. The following are activities now being accomplished by Waste Control Systems, Inc. (WCSI) in Benton County.

1. Recycling of cardboard, newsprint, paper, glass, tin cans, aluminum, iron scrap, wire and appliances is presently being accomplished. As experience is gained with methods of source separation, collection, transportation and markets, we expect this recycled volume to increase.

2. Landfill operations in Benton County, as well as other WCSI landfills, are considered to be among the better facilities in the entire Northwest region, both environmentally and operationally.

3. Discarded liquid waste for energy recovery is now under study. This waste material will be used as a potential fuel supplement to industrial customers. It will also help solve a serious disposal problem both locally and regionally.

4. The utilization of discarded scrap tires as an additive to 'hog' fuel is now in its final development stages. This is a joint effort between WCSI and the Georgia Pacific Corporation. The project, when fully operational, will save many barrels of valuable fuel oil and solve a serious tire disposal problem for the residents of Benton County and the State.

5. Evaluation of different types of energy conversion systems are also under study. These will utilize various types of wastes which can be economically processed to serve as a fuel supplement to industry. One current study is with the Oregon Field Sanitation Committee to combine waste straw grass with local and regional municipal solid wastes to produce a fuel gas which may replace the dependency on natural gas.

### DISCUSSION

To help in understanding how our goal of total resource recovery is to be achieved through the activities presented, the major areas of recycling, landfill management, present projects and services will be discussed in more detail.

RECYCLING in the solid waste industry is not a new phenomenon. It has been occurring for many years. WCSI has been a leader locally, regionally and even nationally in pursuing this goal. WCSI also formed a new subsidiary corporation to pursue the collection of recyclable materials in all areas of WCSI operations. The cardboard baling at our Corvallis facility was the first one in Oregon established by a garbage company. This facility daily bales cardboard that is reprocessed in Oregon into paper products. Eco-Alliance shares part of the Corvallis Disposal facility. This arrangement offers a continuously manned, clean and efficient recycling center for the Corvallis area. Corvallis Disposal provides transportation to markets without duplication of capital costs or overhead. At the present time, approximately 100 tons of cardboard, 45 tons of newspapers, 2 tons of other paper goods, 11 tons of glass, 4 tons of tin and 10 tons of white goods are recycled monthly from Benton County.

At other WCSI operations, including the Lebanon landfill, Woodburn landfill and the Macleay transfer station east of Salem, recycling is taking place. Soon, we will be doing the same at the Polk County transfer station. Presently, WCSI recycles appliances, wire, aluminum, scrap iron, batteries, copper, brass, radiators, electric motors and generators in addition to glass, cardboard and newspaper recovery. This is done not only because of available markets, but also to minimize the waste volume which would be



buried. WCSI operations incorporate recycling not only in Benton County but throughout the Chemeketa Region. This widespread network will greatly affect the economics of transporting these recyclable materials, thus making the project more worthwhile.

A second critical area now receiving a great deal of attention is LANDFILL MANAGEMENT. Presently there is a need for environmentally sound solid waste disposal operations. The majority of the waste stream is now, unfortunately, being buried. There are some items in this stream which most probably will always require landfilling. These landfill items include: stumps, brush, construction waste, demolition, concrete, waste asphalt, broken furniture, mattresses, plastics, rubber, leather, non-returnable containers and other inert materials. Even when a total resource recovery program is implemented, landfills will continue to play a role in that system. In the case of a major market "turn down" or the failure of resource recovery processing equipment, landfills would temporarily be used for disposal.

The Coffin Butte sanitary landfill site in Benton County has a projected life through the year 2000. This projection includes the present growth rate and the addition of Polk County. As resource recovery gains momentum through increased recycling efforts and market availability, the life of the site could be extended almost indefinitely.

WCSI, in accordance with the Chemeketa Plan, is regionalizing its solid waste disposal system. All Benton County residential and putrescible waste goes to Coffin Butte. Waste from the Monroe transfer station also is buried at Coffin Butte. Two years ago, the Albany dump was closed by order of the Department of Environmental Quality and now putrescible waste from Albany is transported to Coffin Butte. Near Corvallis and in

Linn County, WCSI operates a disposal site solely for commercial and industrial waste. This site serves both Linn and Benton Counties. This has become a logical trade-off for both counties.

Two years ago in east Linn County, the Sweet Home dump was closed. Waste is now transferred to the WCSI site in Lebanon. This site is also a regional one serving the entire east Linn County area.

In the north Marion County area, the old Woodburn dump was closed, and now we operate the sanitary landfill facility serving the area. We also operate the Macleay transfer station east of Salem and that waste is transported to our Woodburn site. In October of this year, the landfill site serving most of Polk County will close. WCSI is planning to construct and operate a transfer station to serve the communities of Dallas, Monmouth and Independence.

Normal landfill operations are based on volumetric measurement, so the cubic yard is the basis of all charges and planning. In the areas of recycling and resource recovery, weight measurement is used. Unfortunately, today's weight projections are only guesses as there is little valid data on which to base assumptions. To gather accurate data for planning resource recovery, WCSI will begin a program this spring of weighing garbage trucks to determine actual densities and tons/day presently being disposed of. Essentially, a two-man team will move from site to site weighing trucks in full and then weighing them out empty. We anticipate providing this service to all landfill sites in the Mid-Willamette Valley. The results of this study will provide vital information on which to base assumptions for our resource recovery program.

In developing the concept of total resource recovery, the need for SPECIALIZED HANDLING of certain types of wastes also becomes very important. One such waste classification that cannot be handled using normal

methods is liquid wastes. This includes motor oil, paints, paint thinners and similar type compounds. These wastes could be collected locally and under strictly controlled conditions, then blended with other types of industrial fuels to power boilers and generate steam. These power plants could serve local industrial processors. We anticipate that by collecting these wastes and combusting them at one point source, they can be accurately monitored and controlled. This local disposal solution could reduce costs for special disposal elsewhere in the State and also minimize our area's need for oil or natural gas. WCSI is presently evaluating the sources of these liquid wastes and their composition, amounts and density.

Another area of great concern is the disposal of SCRAP TIRES. It is generally recognized that successful burial of tires is impossible. The tires tend to work themselves up to the surface of the fill due to their composition and shape. WCSI has entered into a joint project with Georgia Pacific Corporation to develop a system to grind up the tires for use as a boiler fuel additive. This particular research and development process has not been without its problems. However, to date some 50,000 tires have been ground and burned successfully at the Georgia Pacific mill in Toledo, Oregon. In fact, the infamous tire pile in Peoria, Oregon has been eliminated. We are very encouraged by these results. This recycling represents a major achievement in this county.

In addition to the other waste materials mentioned, there is a serious problem of GRASS STRAW disposal. This plight of the Willamette Valley grass seed growers has been much discussed by the news media. WCSI has made a commitment to work with the Oregon Field Sanitation Commission to look at alternatives of combining waste straw and municipal waste to produce, possibly, a fuel to supplement local industries. Essentially,



we are exploring the manufacture of methane gas as an ammonia derivative. As a greater demand is placed on energy requirements, the economic feasibility of such projects increases, WCSI is willing to work with others to achieve a satisfactory solution to disposal of these wastes.

As WCSI has become more involved both in Benton County and the surrounding communities, its knowledge and expertise has grown. WCSI now provides consulting services in the field of recycling based on its experience in Corvallis. We help others throughout the State as well as in the State of Washington in the areas of landfill supervision, management, design and feasibility studies concerning resource recovery itself. WCSI services also include locating and designing transfer stations, and marketing and management services in the field of municipal, commercial and industrial waste handling. This, in turn, ends up as being a direct benefit to the residents of Benton County. The professional services offered by WCSI help in determining how Benton County and the Mid-Willamette Valley can initiate a resource recovery system and take advantage of knowledge being gained throughout the country.

WCSI provides information in the community in the form of talks to service organizations, industries, schools and the University as to WCSI's activities and programs. This also gives us an opportunity to receive input from the community. Tours of our operations are provided to familiarize people with how the sanitation industry operates and serves the community.

WCSI personnel belong to and take active part in community activities as well as serving on County and State advisory committees and belonging to professional organizations.

### THE PLAN

The PLAN for a resource recovery plant must take into consideration the recycling, landfill management, specialized handling of certain waste streams, new energy conversion technologies, and new processes for recovery of certain waste streams not presently economical. Therefore, the process must be flexible, economical, and operationally feasible.

Before beginning the project, the proposed system was keyed to comply with:

1. Benton County ordinances
2. The Chemeketa Region Guidelines
3. Department of Environmental Quality Guidelines
4. Environmental Protection Agency Guidelines for "Thermal Processing and Land Disposal of Solid Waste"
5. Federal "Resource Conservation and Recovery Act of 1976"
6. Land Conservation and Development Commission Guidelines
7. Present plans and guidelines as they develop locally, regionally and nationally.

The scope of the investigation included a preliminary feasibility evaluation to:

1. Develop capital and production costs for processing solid wastes for recovery of ferrous, non-ferrous and a refuse derived fuel (RDF)
2. Determine the type, extent and costs of modifications to proposed power generating facilities to receive and burn "RDF"
3. Evaluate the overall feasibility of the proposed system.

In the initial stages of the study, an evaluation of the Benton County and Chemeketa Region solid waste generated in tons per day versus time projections into the future was undertaken. This initial evaluation led to certain conclusions. That:



1. Waste loads in Benton County and the Chemeketa Region will increase
2. Landfill sites can have problems such as leachate, potential air pollution, health factors and aesthetics
3. Later, new landfill sites will be scarce, expensive and politically impossible
4. The economics of such a system can support change based on distance, environmental concerns, and value of the waste products.

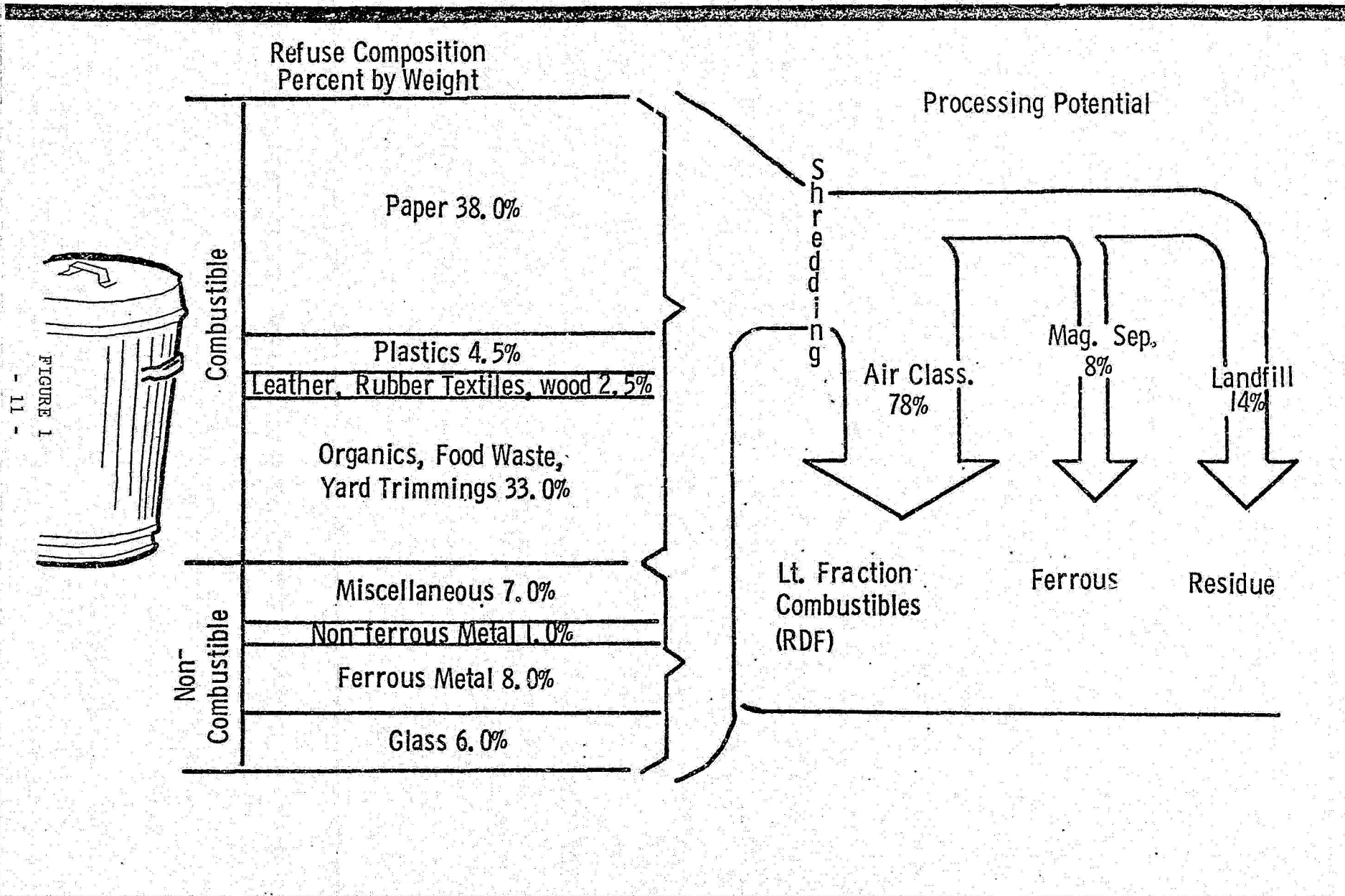
In order to evaluate the "Resource Recovery Potential", a good understanding of the solid waste stream must be known. Such an understanding means knowing the general refuse composition on a percent-by-weight basis and relating this to its processing potential. Figure 1 illustrates the "Resource Recovery Potential". It should be noted that the geographical area, atmospheric conditions, social and economical community styles, population density and distances between communities and towns within Benton County can vary refuse composition and this, in turn, affects the potential value of the final products. Figure 1 is typical of a refuse composition and is used as a basis for this study. As more specific data is obtained from ongoing work by WCSI personnel, this plan will be refined.

The recent awareness for conservation has brought up evaluation of two important points that affect resource recovery:

1. The correlation of waste generated per person per year, and
2. The affect of recycling on refuse composition.

Interestingly, when the Ames, Iowa Resource Heat Recovery Project began full operation, the size of the plant was based on a generation design factor of 1.0 tons of waste generated per person per year based on careful solid waste evaluation studies of the area. After one year of operation, 0.85 tons of waste generated per person per year was found to be true. This indicated that less refuse was being received, possibly

# "RESOURCE RECOVERY POTENTIAL"



due to the effect of recycling. If a certain amount of RDF must be processed to be economical, then more refuse must be available based on the generation rate. Therefore, in this study, WCSI not only had to look at refuse composition but also consider the final fuel characteristics as the volumes and compositions change.

Evaluating the "Resource Recovery Potential", the system must be so designed to be highly flexible in order to produce products that can be used in many types of processes presently available or as they develop in the future. Figure 2 represents an overview of solid waste conversion functions broken down into "front end" and "back end" processing steps. WCSI's plan is to build a "front end" system that meets the criteria of the "back end" requirement for input materials in the most economical and systematic way, whether these input materials go to energy recovery, materials recovery, or both.

Benton County residents may ask: "Why front end processing for ferrous, non-ferrous and RDF?". This question can be answered based on the following:

1. The successes of the pilot plant work done by the City of St. Louis, Union Electric Company, and the Environmental Protection Agency
2. Success of the Ames, Iowa project of processing and converting refuse into kilowatts
3. Many intermediate shredding and ferrous removal facilities now operating across the nation which no longer have landfills available as an economic option
4. Potential energy need markets do exist for RDF, ferrous and non-ferrous materials
5. As these refuse streams are now being utilized, the capital costs and risks are being minimized
6. Growing public acceptance due to energy cost savings, good public relations and proven technology



7. RDF is acceptable to most utility and industrial boilers while meeting the environmental considerations.

This plan's development was based on trip observations to:

1. City of St. Louis facility project
2. City of Ames, Iowa facility
3. Baltimore County facility
4. Great Falls, Montana
5. Union Carbide's process at South Charleston, West Virginia
6. Hamilton, Ontario facility
7. City of Baltimore by Monsanto
8. Navy facility, Norfolk, Virginia
9. Garrett Research's San Diego project
10. National Center for Resource Recovery test facility in Washington, D. C.
11. Bureau of Mines test facility in Washington, D. C.
12. Saugus, Massachusetts
13. Franklin, Ohio

To evaluate and develop a total processing concept for Benton County, the Union Electric-St. Louis front end processing concept had to be understood. This work, in turn, was, and is, the basis for the present success of the Ames, Iowa project. However, unlike the Benton County area, the economics for Story County (where the Ames facility is located) were based on coal which sells for \$40 per ton compared to abundant wood wastes selling for virtually transportation cost only. However, as the demand for energy increases in the Northwest, so will the demand for the wood wastes.

A proposed process schematic was developed based on existing operating facilities. Figure 3 is a front end processing schematic plan for preparing a marketable refuse derived fuel and ferrous and non-ferrous by-products.

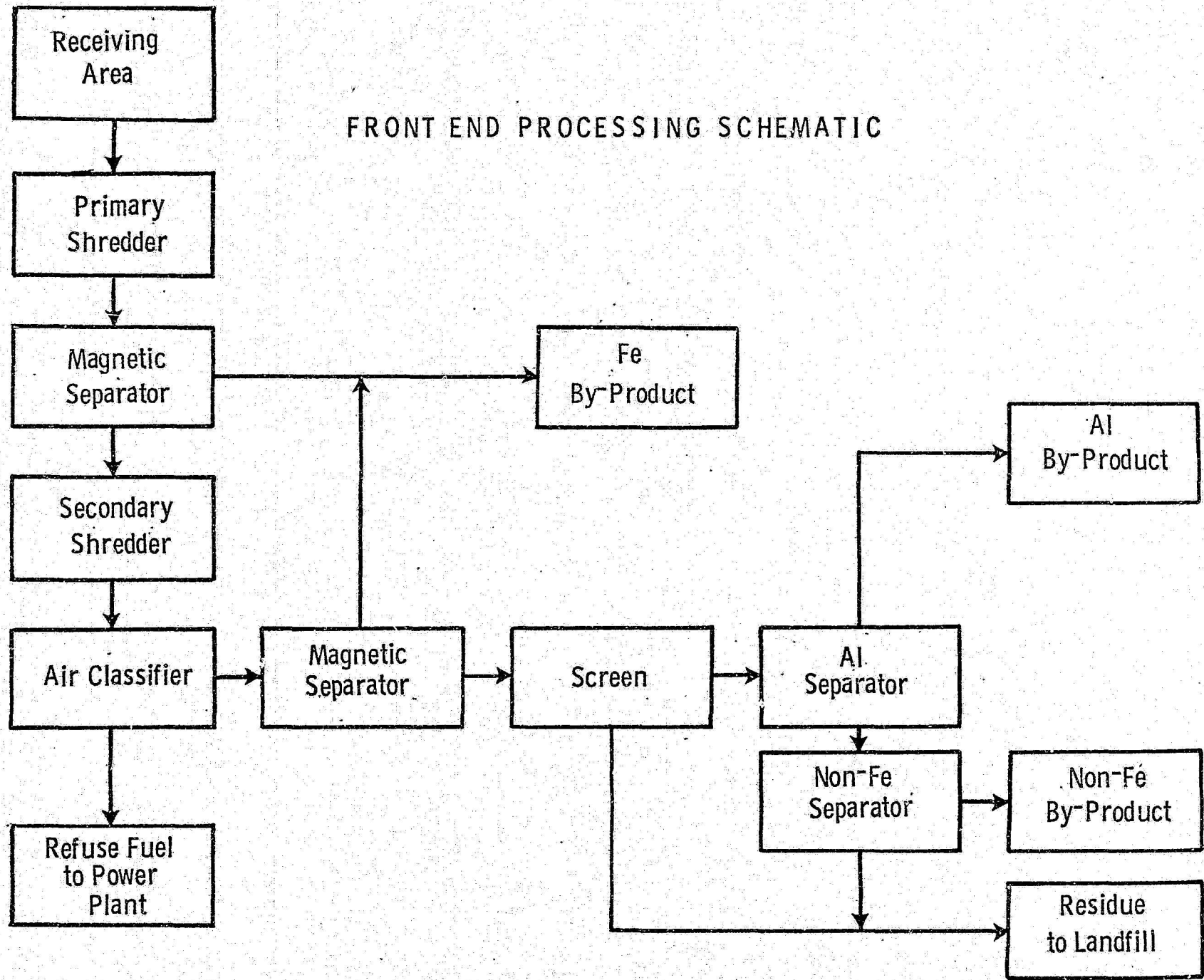


FIGURE 3

In all cases, it should be noted that a properly managed landfill site is a must in case of non-marketable items.

From a processing schematic, a total processing flow diagram has been arrived at (see Figure 4). Here, the raw refuse will be blended and processed in such a manner to produce a fuel that can easily be transported, unloaded, stored and metered as a supplementary fuel along with wood wastes to produce energy while meeting environmental considerations.

RDF is a fuel, and being a fuel it must have certain characteristics. Figure 5 relates to a set of fuel criteria set down in WCSI's feasibility study. The small particle size requirement allows for optimum handling, metering and combustion. The ash content, which is totally inert due to being combusted at very high temperatures, is very safe when disposed of in a landfill.

Thus, looking at the effect of recycling, refuse composition at the processing facility, processing costs, market needs, product worth in relation to distance and amounts transported, appreciation for the fuel user needs and the amounts of refuse available allows for making certain conclusions based on these inputs:

1. Such a proposed system is not now technically and economically feasible due to abundant available wood wastes that, in themselves, pose a serious disposal problem
2. Refuse quantities will be required from sources outside Benton County to make such a project feasible
3. Alternate methods and markets are being actively pursued in the interim.

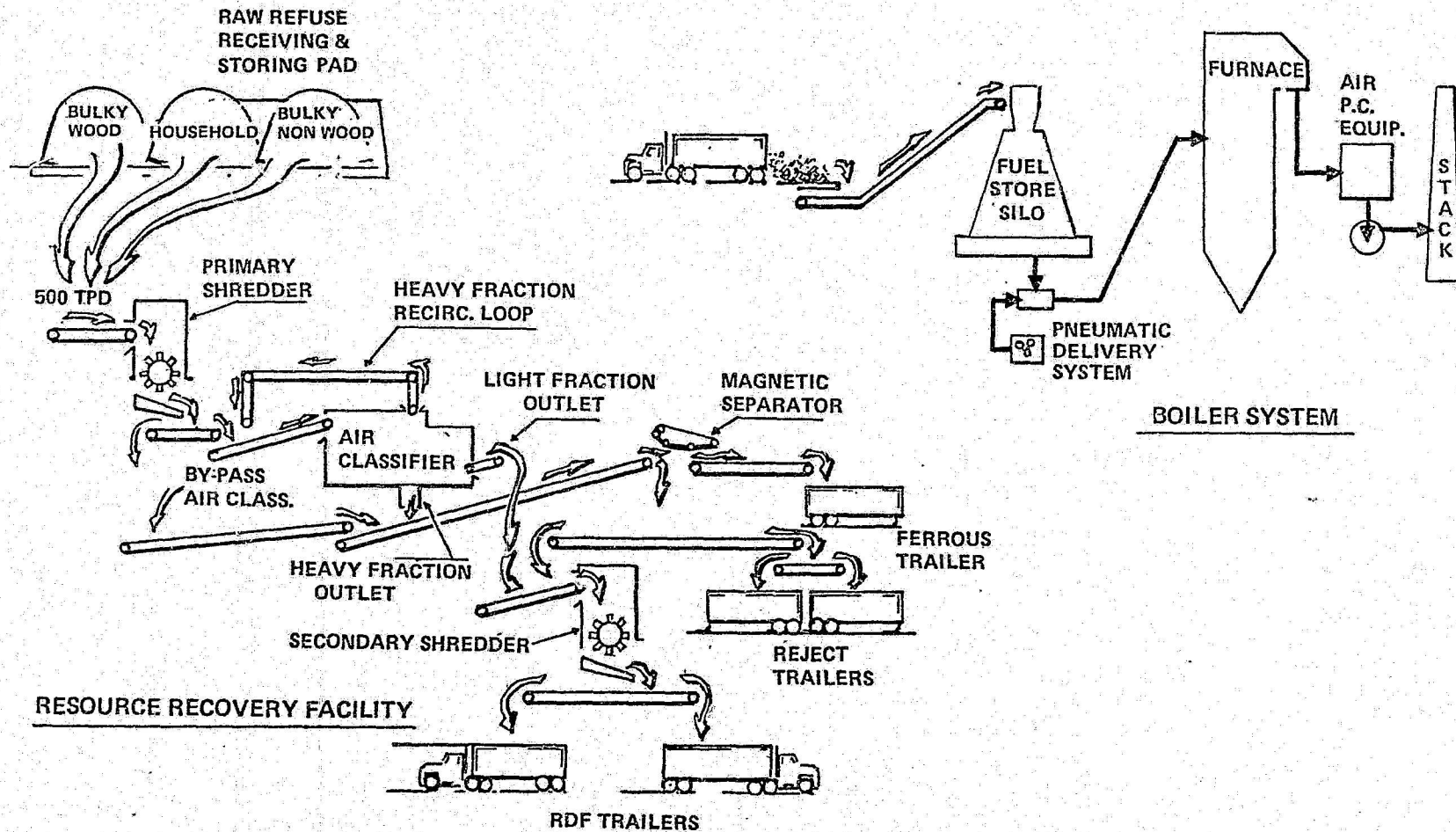
When markets make implementation feasible for a resource recovery plant, the approach will be:

1. Review the entire Resource Recovery Plan with the Benton County Planning Commission, State and Federal agencies, the public and other concerned individuals or groups to get their ideas and concurrence with the preliminary plan.



# Total Processing Concept

## RDF RECEIVING AND FIRING SYSTEM



## C. CHARACTERISTICS OF RDF SYSTEM

Fuel Criteria	Specification
Particle Size	- 98% less than 2", 90% less than 1"
Ash Content	- Range 8-15%, Average 12%
Moisture Content	- Range 15 - 30%, Average 25%
Sulphur Content	- 0.2% Average
Chlorine Content	- 0.3% Average
Higher Heating Value of Fuel	- 6500 BTU/Lb.
Lower Heating Value of Fuel	- 4875 BTU/Lb.
Putrescible Content/Odor Characteristics	- Negligible
Delivery	- 20 Ton loads by standard bulk trailers
Residue Disposal	- Negligible



2. Refine the engineering analyses and system approach to arrive at a firm base decision to proceed with the implementation
3. Recommend implementation of a final system for a long-term solid waste disposal and resource recovery facility.

#### TIME SCHEDULE

An update on WCSI's resource recovery plans will be submitted annually to the Benton County Planning Commissioners, or sooner if any significant development occurs with the overall total resource recovery plan herein submitted or any one of its programs.

#### CONCLUSION

The total resource recovery success depends on economic recovery of each waste material. The economics of each depends on the volumes of waste, its composition, handling and transportation costs, as well as demand for final product. Equipment failures, market changes, and the disposal of the resource recovery residue will always demand the need for landfills. Markets must exist to make recovery of these waste materials economical. WCSI is an organization that has the flexibility to respond to market changes. We possess technical knowledge, management capability, marketing expertise and ability for capitalization. To achieve total resource recovery requires enthusiasm, study, evaluation and active participation in projects which will lead WCSI to this goal.

# **The EPA investigation of Coffin Butte Landfill has moved into its next phase**

## **EPA Enforcement: a timeline and explainer**

Ken Eklund  
April 15, 2025

### **What's happening?**

The public has known for a while that the EPA was investigating Coffin Butte Landfill: neighborhood groups brought up concerns about the landfill to Senators Merkley and Wyden in the years 2021 – 2023, and their staffs took the matter to the EPA. In May 2024 Senator Merkley asked Michael Regan, then Head of the EPA, about Coffin Butte Landfill in hearings. Regan confirmed that the EPA had opened a case and was actively pursuing it against the landfill.<sup>1</sup>

That investigation has now progressed to EPA enforcement action against the landfill. On January 16, 2025, the Enforcement Manager for EPA Region 10 served a process on Republic Services, in the form of a Section 114 Information Request.<sup>2 3</sup>

This process document came to light when Bailey Payne, the Solid Waste Coordinator for Benton County, filed a Freedom Of Information Act request on behalf of the county's Disposal Site Advisory Committee, which was seeking more information about the EPA investigation. Republic Services did not disclose to you, the Planning Commissioners, that the landfill had been served a Section 114 Information Request in their final update to their Application to expand the landfill, which they filed with the County on March 14, almost two months after the EPA served the Request on them.

### **What does it mean to be served a Section 114 Information Request by EPA Enforcement?**

- Technically, it's a "Clean Air Act (CAA) Section 114 Information Request," which is functionally a government subpoena.
- This Section 114 Information Request requires the landfill's Environmental Manager to turn over a comprehensive list of environmental records to the EPA. Air quality regulations require the landfill keep these records of their self-testing and monitoring.
- There are two kinds of Section 114 Information Requests: "rulemaking" ones and "enforcement" ones. This is an enforcement IR: it was filed by the Manager of the Air and Land Enforcement Branch of Region 10 of the EPA, and the document states it is requiring records so that it can determine "whether any violations of the Clean Air Act have occurred."
- The document requires someone at Republic to certify that the information provided is "true, accurate and complete" under threat of fines or prison.

- The EPA investigation has moved into its next phase: assessing compliance.

### **What is the implication of the Section 114 Information Request by EPA Enforcement?**

It implies that the EPA intends to initiate enforcement action as warranted. The Section 114 Information Request is a crucial tool in the EPA's arsenal for gathering data and ensuring accountability in matters related to air pollution. It's often the first step in enforcing compliance.

It may be useful to think of the Section 114 Information Request as the environmental equivalent of an audit by the Internal Revenue Service. In both cases it's an effective litigation tactic to query the underlying data in a defendant's possession, because that can naturally lead to findings that the defendant (1) is not maintaining data properly, or (2) has altered or destroyed data, or (3) has not been complying with regulations, all of which are offenses. With both the IRS audit and the Section 114 Information Request, the action often represents the initial stage of a process that can end up assessing civil penalties, issuing compliance orders, or initiating legal proceedings.

### **What are possible reasons EPA Enforcement has taken this step?**

The implication is that the EPA has grounds to believe that Republic has committed some infractions and that Coffin Butte Landfill is out of compliance. What's not known at this time is how serious the believed infractions are. Throughout this process the EPA has declined to discuss their investigation, as it is an active legal proceeding.

Here's what we know the EPA knows about the landfill, that may be grounds for or contributing to its Section 114 Information Request:

- The EPA inspected the landfill twice, once in 2022 and again in 2024, and both times found larger numbers of breaches, and breaches much more serious in scale, than what Republic's self-monitoring had reported. The 2024 inspection, for example, found an uncapped landfill gas well leaking at 230 times the actionable amount.<sup>4</sup>
- The EPA required Republic to remediate the 61 breaches identified by the EPA's 2022 inspection, but there seems to be no corresponding remediation log for these breaches in Republic's subsequent reporting to Oregon DEQ. It's possible those leaks were never remediated.
- In September 2024, the EPA widely issued two Enforcement Alerts to municipal landfills such as Coffin Butte. These Enforcement Alerts warned of a series of regulatory infractions that the EPA had noted during recent inspections. This Section 114 Information Request may be a follow-up to these Enforcement Alerts, again because of infractions observed during the EPA's 2022 and 2024 inspections of the landfill.<sup>5</sup>

- Carbon Mapper, a climate science nonprofit, partnered with the EPA to survey hundreds of landfills in 2023, detecting and quantifying their methane leaks from the air. Their survey of Coffin Butte Landfill revealed four super-emitting leaks, all active in different locations on the landfill at the same time, throughout the 10-day survey period.<sup>6</sup>
- Carbon Mapper estimated that during that survey period, Coffin Butte Landfill was leaking methane at a rate of 1.7 metric tons per hour, which is almost twice the average rate for super-emitting landfills as a class. So Coffin Butte Landfill may have been prioritized for enforcement action.<sup>7</sup>
- Oregon DEQ collaborated with the EPA on the 2024 inspection, and may have shared information about its own enforcement action against the landfill happening at that time, regarding Republic's non-compliance with requirements to update its landfill gas collection and control system.
- The EPA has the Community Concerns Annual Reports compiled by Benton County's Disposal Site Advisory Committee for the years 2021-24. These Annual Reports summarize concerns and complaints by members of the public. Each report has hundreds of community concerns, with "odor" and "methane" being the most prevalent issue. The 2024 CCAR summarizes 233 community reports, for example, with odor comprising 59% of total issues raised and methane being an additional 7%.<sup>8</sup>

### **What effect does the EPA Enforcement action have on Republic's application to expand the landfill?**

In my view, EPA Enforcement's action defeats Republic's expansion application, because it causes the application's Burden of Proof to fail. This outcome is apparent when you view this legal landscape from a Planning Commissioner's point of view – your point of view. To approve the expansion application, a Planning Commissioner would have to affirm Republic's proofs as sufficient; they'd have to publicly certify that an expanded dump couldn't pose significant problems – and do so while the EPA is actively investigating the current dump for significant problems. This seems like an impossible position for you as a Planning Commissioner to take.

EPA Enforcement's action can unravel the expansion application so thoroughly because the application's Burden of Proof has been built around a core misdirection all along: it focuses on regulations and regulatory power. The Planning Commission's criteria, however, do not say anything about regulations: they focus on actual harms.

In the world of the applicant's Burden of Proof, it's impossible for these two statements to both be true: (a) "the applicant is complying with environmental regulations" and (b) "the landfill is causing environmental harms." The Burden of Proof attempts to construct a binary world.

In the world of the Planning Commission's criteria, however, it's quite possible for both statements to be true. You regularly make judgments on how land uses will work (or not) in the real world.

Put another way, Republic's Burden of Proof means that their application must show that the landfill expansion won't cause significant harm to nearby properties, character of the area, etc., or it fails. Their proof for this has been "we comply with environmental regulations" – this is said throughout their Burden of Proof. But now that the EPA has said "let's see all your compliance records" explicitly to see if Republic really is complying, the EPA has slapped big red question marks all over Republic's proof. And a proof with big red question marks on it is no proof at all.

### What has been Republic's response to the EPA Enforcement action?

- **No disclosure.** Republic did not disclose in their final Burden of Proof that Coffin Butte Landfill had been served by the EPA, nor offer the Planning Commissioners any narrative about it.
- **Misleading statement maintained.** Republic's Burden of Proof includes a letter that states "we have not received notification from the EPA that... Coffin Butte is the subject of any pending enforcement action" dated the day the EPA Enforcement initiated its action.<sup>9</sup>
- **Delay.** You as a Planning Commissioner might reasonably expect Republic to deal with this EPA Enforcement action forthrightly and expeditiously, to "clear the air" for their expansion application. Instead, Republic Services has acted instead to delay the EPA's examination of landfill records by filing two extension requests to date. With these extensions, they have made it impossible for the EPA to take further action until after the public comment period for the application is closed.<sup>10</sup>

### Summary.

On January 15 the EPA's investigation of Coffin Butte Landfill moved into a new phase: active enforcement proceedings. The Enforcement Manager for EPA Region 10 served a process on Republic Services, in the form of a Section 114 Information Request. Republic Services did not disclose this development and have no narrative about it for the Planning Commissioners. The EPA Enforcement process would seem to render the applicant's Burden of Proof insufficient, because that Burden of Proof focuses on the lack of enforcement action by regulators as credentials of the applicant. I recommend that the Planning Commissioners deny LU-24-027, the application to expand Coffin Butte Landfill, due to the applicant's failure to make a convincing case for their environmental compliance, and due to the gravity of many questions raised about the accuracy and completeness of its application.

–

#EPAenforcement  
#Section114  
#explainer

1

1:52:32

*Senator Merkley:* [In my] home state: Coffin Butte Landfill. In June of 2022 the EPA sent out a team to measure the methane coming out of it, because of local concerns. The inspection resulted in recording 61 leaks, including three measurements that maxed out the instrumentation that was being used, at 70,000 parts per million. So: can you give me a short version of what action the EPA is taking? This is now 23 months ago that the field inspection occurred. If we need a longer discussion, I'd like to follow up with you to make sure that there is going to be action regarding landfills like this that are out of compliance.

1:53:10

*Mr. Regan:* Well, I will say that our enforcement arm has been very aggressive at looking at these methane leaks and opportunities here. This is one that as you said was discovered in 2022. Unfortunately it is an active enforcement situation, so I can't speak to that without betraying the confidence or the legal obligations that I have. But I can tell you that we are coordinating with the State of Oregon – it's an active case, and we are laser-focused on this case.

1:53:43

*Senator Merkley:* Great, because if you have a landfill which maxes out the instrumentation – which is I think quite rare? – it should probably rise to the top of the list of places to act on. I'll convey to the folks in Corvallis and nearby that you are on the case.

*Senate Appropriations Committee Hearings, May 1, 2024 ([link](#))*

<sup>2</sup> This Section 114 Information Request has been supplied to the Planning Commission: search testimony for #EPAInfoRequest

<sup>3</sup> The EPA served their Section 114 Information Request upon Republic's registered agent in Oregon, CT Corporation. CT Corporation's legal arm relayed the EPA process on to Republic's legal department with a cover letter that identified the nature of the process as "Subpoena – Business Records" and the Action involved as "United States Environmental Protection Agency vs. Republic Services"

<sup>4</sup> These EPA Inspection Reports have been supplied to the Planning Commission: search testimony for "Heinz" (2022 Inspection) and "Conley" (2024 Inspection)

<sup>5</sup> "EPA Issues Two Enforcement Alerts to Highlight Compliance and Monitoring Obligations for Municipal Solid Waste Landfills," September 25, 2024 ([link](#))

<sup>6</sup> Data publicly available at [CarbonMapper.org](#). See also: Carbon Mapper explainer at #methaneplumes

<sup>7</sup> Data publicly available at [CarbonMapper.org](#). See also: Carbon Mapper explainer at #methaneplumes

<sup>8</sup> These Community Concerns Annual Reports have been supplied to the Planning Commission: search testimony for #CCAR

<sup>9</sup> See Republic's January 15, 2025 update to its Burden of Proof

<sup>10</sup> Emails between Paul Koster, Environmental Manager at Coffin Butte Landfill, and Sara Conley, EPA Air Enforcement Officer, Region 10, obtained through FOIA. At Paul's request, the original deadline for the Section 114 Information was extended 180 days, to May 12.