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Subject: Comment on A.1 section of BCTT Draft 3
Date: Monday, January 30, 2023 7:44:06 AM
Attachments: [BCTT Draft 3 A.1 community member comments 30Jan2023.pdf](#)

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All:

I am proposing that the attached document be included in the packets for the Planning Commission and the Solid Waste Advisory Council as they review and consider BCTT Draft 3.

This is almost certainly a minority statement in the context of the A.1 subcommittee. I have attempted to be clear that this is the perspective of a community member and is not intended to represent the wider subcommittee.

I expect that Sam will comment on what is to be done with this in terms of comments, submission to PC/SWAC, etc.

Paul

A.1 Landfill Size/Capacity/Longevity: Community Member Comments

Paul Nietfeld, A.1 Subcommittee Community Member

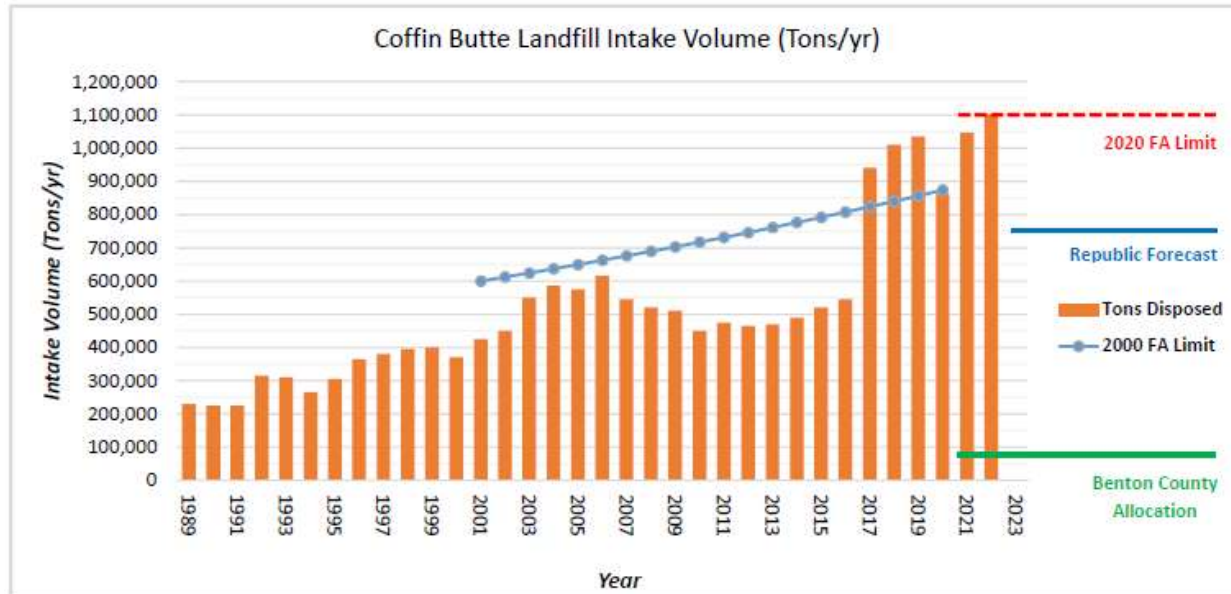
Background

The perspective of the Benton County Community Development department (CDD) has come to dominate the released document (“Draft 3”), which has masked key points of contention within the A.1 subcommittee and suppressed or excluded views other than those of the CDD. This outcome is largely a result of a workflow in which CDD staff shouldered the responsibility for final draft editing without review by the wider subcommittee (driven by schedule constraints for Draft 3), and the fact that CDD often has a strong opinion on the subject matter and is functioning as an active counterparty in the negotiations.

This document will highlight two of these topics from the perspective of community members on the A.1 subcommittee who are neighbors of the landfill. These two examples may be useful not only in their details but in clarifying the extent to which perspectives differ strongly among the parties involved (Republic Services, Benton County, and community members).

Topic 1: Term definition and intent of 2000 and 2020 Landfill Franchise Agreements

A strong difference in the interpretation of a key contractual stipulation in the 2000 Landfill Franchise Agreement has emerged in the course of the A.1 deliberations. This debate was initiated in discussion of the Landfill Intake chart (below) that was initially presented to the BCTT workgroup on September 15, 2022.



Comparison of this chart to the edited version (p. 124 of Draft 3) reveals that the labeling of the “2020 FA (Franchise Agreement) Limit” and the “2000 FA (Franchise Agreement) Limit” have been modified. CDD staff has been emphatic in insisting that these provisions of the two agreements are not comparable, that the 2000 Franchise Agreement did not define a “limit”, that the term “threshold” should be used instead of “limit”, and that annual intake tonnage over the “threshold” should be classified as “exceedances” rather than “violations.” The CDD terminology resulted in the rewording of five of the A.1 Findings (LSCL F-6, 7, 9, 10, 11, and 21) and one of the two Recommendations (LSCL R-1) in the final edit prior to the release of the Draft 3 document. The changes altered the tone and meaning of these key points.

While it is strictly true that the term “limit” is not used in the relevant section of the 2000 document, the following agreement language provides guidance on understanding the intent of this specifically-calculated annual value:

- a. The annual intake tonnage level (shown in blue above) was defined in the context of “Impacts of Waste Volume” (Section 8);
- b. The parties “acknowledge that there may be adverse effects to the County’s infrastructure and environmental conditions due to increased annual volumes of Solid Waste accepted at the Landfill”;
- c. It is stipulated that “If during the term of this Agreement the volume of solid waste accepted at the Landfill in any calendar year exceeds <the calculated value>” the County has recourse to remedies, consisting of performing a new baseline assessment, determining if adverse impacts have occurred, and forcing a renegotiation of the landfill Franchise Fee and/or Host Surcharge.

It does not seem unreasonable to apply the term “limit” to the levels stipulated in Section 8 of the 2000 agreement, in the sense that a boundary was established, that, if violated, provided for negative consequences for the party responsible for the violation.

Community members had considered the annual intake limit stipulation to be the mechanism by which the county was striving to control at least one avenue of negative impact from the landfill, that of excessive intake volumes. Both the 2000 and the 2020 agreements stipulated similar terms in this regard (although the remedy of fee renegotiation was eliminated in the 2020 agreement). That the county is now denying that Section 8 of the 2000 agreement should be interpreted in this manner is a significant and puzzling disappointment.

With respect to issues considered by Planning Commission and the Solid Waste Advisory Council, the county’s denial that an effective intake limit was defined in the 2000 agreement and that violations of this limit occurred in years 2017-2019 raises questions about the degree to which the county would enforce penalties for future violations of contractual terms by the franchisee.

Topic 2: Landfill life projection: consideration of factors with potential impact on landfill life

A major task of the A.1 subcommittee was to provide an estimate of landfill life. The franchisee has provided a baseline projection generated from simple assumptions (flat intake volume of 1.0 or 1.1 MTons/year, relatively high packing density of 0.999 Tons/yd³). The subcommittee has provided guidance on factors that influence the baseline projection.

CDD staff has generated a separate “discussion” (pp 148–158) of these factors, which is patterned after the actual subcommittee input about them (pp 159–166) but which removes vital context. The CDD version downplays the role of the 2020 FA cap throughout, for example, although this was clearly a key determinant in the 1.1M ton baseline in the first place; unlike the subcommittee input, the edit presents intake levels as an unrestricted franchisee decision. The CDD version also skews the influence of factors, not presenting an outcome where landfill expansion (and removal of the cap) could shorten landfill life, for example, yet presenting outcomes where activism or climate crisis legislation increase disposal rates, which is hard to imagine. The CDD edit thus selectively removes the context that qualified the factors for inclusion in the first place. Throughout the process, CDD staff and the facilitator have worked to limit guidance on these factors, i.e. purposefully reducing their informational content to the lowest common denominator (or deleting entirely).

The subcommittee would find it helpful to hear input from SWAC, Planning Commission and other reviewing bodies on their assessment regarding undue CDD staff influence on reports.