

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Abingdon Division**

CLERKS OFFICE U.S. DIST. COURT
AT ABINGDON, VA
FILED

5/26/2022

JULIA C. DUDLEY, CLERK

BY: LOTTIE LUNSFORD

DEPUTY CLERK

THE CITY OF BRISTOL, TENNESSEE,)

Plaintiff,)

v.)

THE CITY OF BRISTOL, VIRGINIA,)

Defendant.)

Civil Action No. 1:22CV00023

TRIAL BY JURY DEMANDED

TABLE OF CONTENTS

I.	The History of the Permits Governing the Operation of the Landfill.....	8
A.	The Solid Waste Permits.....	8
B.	The Air Permits.....	10
1.	Air Permit Requirements Specific to Management of the Gas Created by the Landfill.	11
II.	Bristol, VA’s Documented Failures to Comply with its Permit Requirements.....	13
A.	Bristol, VA’s violations of the air permits.....	13
B.	Bristol, VA’s violations of SWP 588.....	16
III.	Other Landfill Deficiencies.....	21
A.	Bristol, VA’s failure to meet deadlines.....	21
B.	Complaints regarding the odors from the Landfill.	22
C.	Bristol, VA’s failure to implement consultant recommendations.	25
D.	Bristol, VA’s failure to properly staff and fund the Landfill.	26
IV.	The Consequences of Bristol, VA’s Failure to Operate and Maintain the Landfill.	30
A.	Subsurface Reactions/Chimneys.....	30
B.	Failure to Identify and Address Benzene Release.	32
C.	Elevated Air Emissions.....	33
D.	Noxious Odors.	34
V.	DEQ’s Expert Panel Has Recommended Actions to Mitigate the Noxious Odors and Bring the Landfill into Compliance with its Permits, but Bristol, VA Has Taken No Action to Implement the Recommendations.....	35
VI.	Bristol, VA’s Failure to Maintain and Operate the Landfill Adequately Has Created a Public Nuisance and Harmed Bristol, TN.	38
	COUNT I (VIOLATIONS OF CLEAN AIR ACT, 42 U.S.C. § 7604(a)(1)&(3)).....	41
A.	Violations of Gas Well Head Temperature Limit.....	42
B.	Violations of Gas Well Head Daily Temperature Readings.....	44
C.	Violations of the Requirement to Conduct Enhanced Monitoring.	44
D.	Violations of the Requirement to Correct Temperature Exceedances.....	45
E.	Violations of Surface Methane Concentration Monitoring Requirement.....	45
F.	Violations of Gas Well Head Oxygen Concentrations.	46
G.	Violations of Positive Gas Well Head Pressure Requirement.	48
H.	Violations of Gas Collection System Expansion Requirement.	50

I.	Violations of Monthly Visible Emission Observation Requirement.	50
J.	Violations of Well Head Monitoring Requirement.	51
K.	Violations of the Requirement to Maintain Emission Records.	52
L.	Violations of Semi-Annual SSM Reporting Requirement.....	52
M.	Violations of Requirement to Comply.....	52
SECOND CAUSE OF ACTION (VIOLATIONS OF RCRA, 42 U.S.C. §6972(A)(1)(B), IMMINENT AND SUBSTANTIAL ENDANGERMENT)		53
THIRD CAUSE OF ACTION (PUBLIC NUISANCE AS A RESULT OF NEGLIGENT MAINTENANCE AND OPERATION OF THE LANDFILL)		54

TABLE OF EXHIBITS

Exhibit	Description
1	Email from R. Eads to S. Weddington (Oct. 24, 2021)
2	Letter from R. Eads (Jan. 3, 2022)
3	Expert Panel Report (Apr. 25, 2022)
4	Notice of Intent to Sue (Dec. 8, 2021)
5	Permit Module I, General Permit Conditions
6	Title V Permit March 2021
7	NSR Permit Sept. 2015
8	Notice of Violation (Feb. 22, 2021)
9	Letter from R. Eads to DEQ (Mar. 4, 2021)
10	Notice of Violation (Aug. 20, 2021)
11	Letter from R. Eads to DEQ (Aug. 27, 2021)
12	Notice of Violation (Sept. 22, 2021)
13	Notice of Violation (Dec. 10, 2021)
14	Notice of Violation (May 3, 2022)
15	May 13, 2022 Status Report
16	DEQ Deficiency Letter (Jan. 11, 2021)
17	DEQ Warning Letter (May 27, 2021)
18	Letter from R. Eads to DEQ (Jun. 15, 2021)
19	Email to DEQ re: status of repairs to pump (Aug. 31, 2021)
20	CASE Report – 2016-2020 (Aug. 31, 2021)
21	Letter from J. Hurst to R. Eads (Nov. 5, 2021)
22	Notice of Violation (Dec. 7, 2021)
23	Notice of Violation (Apr. 25, 2022)
24	DEQ Air Inspection Report (Dec. 21, 2020)
25	Communication from R. Eads (Aug. 23, 2021)
26	Odor Management Plan – June 2021 (Jul. 31, 2021)
27	Odor Management Plan – July 2021 (Aug. 31, 2021)
28	DEQ Notes for City of Bristol Landfill, SWP 498, Site Visit (Nov. 4, 2021)
29	DEQ Warning Letter SWP 588 (May 3, 2022)
30	Randy Eads Presentation
31	Email from D. Manweiler to M. Weddle (Feb. 9, 2021)
32	Update from R. Eads (Dec. 30, 2020)
33	Letter from R. Eads to DEQ (Sept. 30, 2021)
34	Email from R. Eads to J. Warner (Oct. 25, 2021)
35	Correspondence from S. Daniel to J. Hurst (Oct. 18, 2021)
36	April 15, 2022 Status Report
37	DEQ Letter from D. Scott (Aug. 13, 2020)
38	Email re: Odor Management Plan (Mar. 17, 2021)
39	Email from S. Martin (May 24, 2021)
40	Bristol Landfill Odor Management Plan Permit #588 (Jun. 7, 2021)
41	Odor Management Plan Monthly Report (May 2021)
42	Odor Management Plan Monthly Report (Sept. 2021)

43	Odor Management Plan Monthly Report (Nov. 2021)
44	Independent Cost Analysis Report
45	Email from D. Bowman to J. Hurst (Jan. 12, 2021)
46	Email from R. Pritchard to Z. Mitchell (Jun. 17, 2021)
47	Email from R. Eads (Jan. 27, 2021)
48	Email from R. Eads (Apr. 22, 2021)
49	Email from A. Hubbard (Sept. 20, 2017)
50	Bristol Landfill Facility Update (May 24, 2021)
51	Bristol Landfill Facility Update (Sept. 27, 2021)
52	Bristol Landfill Facility Update (Sept. 13, 2021)
53	Email from R. Eads (July 14, 2021)
54	Letter from R. Eads to Community (Oct. 24, 2021)
55	Letter from R. Eads to DEQ (Sept. 30, 2021)
56	Minutes, Regular Meeting of the City of Bristol, VA (Nov. 23, 2021)
57	Email re: Chimneys at the Landfill (Feb. 9, 2022)
58	Correspondence from M. Martin to S. Martin (Apr. 9, 2021)
59	Letter from K. Melvin (Aug. 23, 2021)
60	Correspondence from S. Bowers to S. Hess (Sept. 30, 2021)
61	January 14, 2022 Status Report
62	DAA, Western Chimney Landfill Gas Pilot Mitigation Program
63	Email from R. Eads (Sept. 26, 2021)
64	Press Release, BVUA Announces Compliance Order on Landfill Benzene (Dec. 3, 2021)
65	EPA Final Air Monitoring Report (Oct. 4, 2021)
66	EPA Conducts Additional Air Monitoring in Bristol Area. (Oct. 2021)
67	EPA Final Air Monitoring Report (Dec. 13, 2021)
68	Dr. Green Report
69	DEQ Letter to Bristol, VA (May 6, 2022)
70	Letter from R. Eads to J. Hurst (May 18, 2022)
71	Declaration of Mike Carrier
72	Declaration of Bill Sorah
73	Declaration of Dr. Annette Tudor
74	Declaration of Ed DePew
75	Declaration of Terry Napier

VERIFIED COMPLAINT

Plaintiff, the City of Bristol, Tennessee (“Bristol, TN”), by counsel, states as follows for its Verified Complaint against Defendant, the City of Bristol, Virginia (the “City” or “Bristol, VA”):

INTRODUCTION

Bristol, VA owns and operates a solid waste landfill (the “Landfill”) that is located approximately 1,000 feet from Bristol, TN. Since the fall of 2020, the odors coming from the Landfill have been so noxious that living and working in parts of Bristol, TN has become almost intolerable. The situation has gotten so bad that the Commonwealth of Virginia and its lead environmental regulator, the Virginia Department of Environmental Quality (the “DEQ”), used emergency funds to establish a panel of experts to determine the actions necessary to address the situation. This emergency situation is the direct result of Bristol, VA’s admitted failure to (a) properly operate and maintain the Landfill, (b) comply with the environmental permits that regulate operation of the Landfill, and (c) take the necessary steps to cure these problems since at least September 2020.

Starting in February 2021, DEQ began issuing notices of violation (“NOVs”) to Bristol, VA citing violations of the Landfill’s air and solid waste permits. DEQ has issued a total of seven NOVs to Bristol, VA, citing repeated violations of federal and state requirements. Those NOVs remain unresolved. DEQ also issued warning letters in May and August 2021, and in March and May 2022, citing actions that the Landfill was required to implement to avoid additional enforcement actions. Bristol Virginia Utilities (“BVUA”), which operates the wastewater collection system that receives leachate discharges from the Landfill, has separately issued NOVs due to the Landfill’s failure to comply with discharge limits.

These NOV's are not isolated. Rather they are indicative of a broader problem: Bristol, VA's failure to properly fund, staff, maintain, and operate the Landfill. These failures have not only resulted in persistent violations of the Landfill's permits, but they also have contributed to the pervasive and noxious odors that are emanating from the Landfill. Bristol, VA's wrongful conduct has resulted in direct, detrimental impacts to Bristol, TN's operations and has caused Bristol, TN to expend financial resources to try to address this public nuisance created by Bristol, VA.

Bristol, VA has acknowledged the adverse impacts its actions (or lack of action) have had on the surrounding community. In October 2021, Randy Eads ("Eads"), the City Manager for Bristol, VA, conceded that "[c]itizens are suffering, and I wholeheartedly recognize the frustration the citizens are having due to dealing with this for the past 10-11 months." See **Exhibit 1** (email). On January 3, 2022, Eads told DEQ and the U.S. Environmental Protection Agency (the "EPA") that "[c]itizens of our community are still experiencing the malodors emanating from the [L]andfill," and that "the odor creates a lower quality of life for our community." See **Exhibit 2** (letter). And on May 24, 2022, Eads referred to the Landfill as a "monumental disaster".¹ When Bristol, VA constructed the Landfill, it received permits requiring it to comply with federal and state regulations designed to protect human health and the environment. Bristol, VA, however, has not complied with these legal requirements, and the consequences of Bristol, VA's noncompliance are being felt by Bristol, TN.

In response to this serious emergency, DEQ took the extraordinary step of convening a panel of experts to examine the Landfill and come up with recommendations regarding how to

¹ David McGee, *Residents Call for More Info from Bristol Virginia City Council Over Landfill*, Bristol Herald Courier (May 25, 2022), https://heraldcourier.com/news/local/residents-call-for-more-info-from-bristol-virginia-city-council-over-landfill/article_3b046d1a-cc81-505c-81fb-9aba42ba2c8f.html#tracking-source=home-top-story.

address the ongoing violations, mitigate the noxious odors coming from the Landfill, and develop plans for closing the Landfill. The results of the panel’s work are set forth in its Expert Panel Report: Bristol Integrated Solid Waste Management Facility, Bristol, Virginia, dated April 25, 2022 (the “Expert Report”). *See Exhibit 3.* The Expert Report recommends that Bristol, VA take multiple actions *immediately* to address the noxious odors, which were “readily apparent to the Panel members” during their visit to the Landfill. *Id.* at p. 3. In fact, “[t]he brevity of [the Expert Report] reflects the *urgent need to implement the Panel’s recommendations.*” *Id.* at p. 2 (emphasis added). The Expert Report also concludes that Bristol, VA should not accept any more waste so that these recommendations can be implemented. *Id.* at p. 13.

Despite this continuing emergency and the Expert Report’s recommendations to take immediate action, Bristol, VA has done virtually nothing to implement the recommendations of the expert panel. In fact, Eads has suggested that it may be another year—or more—before Bristol, VA implements the Expert Report’s recommendations: “Over the next year we’re going to continue to get data and give it to the experts, give it to our consultants and engineers so that they can come to some conclusion as to how we move forward[.]”² Bristol, VA’s refusal to implement these expert recommendations immediately as directed by the panel is unacceptable and untenable. Moreover, despite seven NOV’s having been issued, no government regulator has initiated a legal proceeding against the Landfill.

By filing this lawsuit, Bristol, TN exercises its rights under two federal statutes, the Clean Air Act (“CAA”) and the Resource Conservation and Recovery Act (“RCRA”), to bring a citizen suit to force Bristol, VA to comply with its environmental permits and to address the substantial

² David McGee, *Residents Call for More Info from Bristol Virginia City Council Over Landfill*, Bristol Herald Courier (May 25, 2022), https://heraldcourier.com/news/local/residents-call-for-more-info-from-bristol-virginia-city-council-over-landfill/article_3b046d1a-cc81-505c-81fb-9aba42ba2c8f.html#tracking-source=home-top-story.

public danger that it has created through its undisputed failure to operate and maintain the Landfill properly. Bristol, VA must be required to immediately implement the recommendations of the Expert Report, including ceasing waste disposal operations, and to fulfill its legal—and moral—obligations to properly operate and maintain the Landfill as a means of curing the problems at the Landfill. Moreover, Bristol, TN is entitled to recover damages under Virginia law that Bristol, VA’s woefully inadequate operation and maintenance of its Landfill has caused Bristol, TN and its citizens.

PARTIES

1. Plaintiff Bristol, TN is a municipality organized under the laws of Tennessee and has approximately 27,000 residents. It is adjacent to Bristol, VA, separated by the state line between Virginia and Tennessee.

2. Bristol, TN is governed by its city council (the “City Council”). *See* Charter of the City of Bristol, Tennessee, Sec. 2-1. The City Council has authorized Bristol, TN to bring this action. *See* Resolution 22-16, adopted March 8, 2022.

3. Bristol, TN is a “person” within the meaning of the CAA, 42 U.S.C. § 7602(e), and RCRA, 42 U.S.C. § 6903(15).

4. Defendant Bristol, VA is a municipality organized under the laws of the Commonwealth of Virginia. Bristol, VA solely owns and operates the Landfill, which is located at 2125 Shakesville Road, Bristol, Virginia, 24201. Bristol, VA is the permittee listed on the Landfill’s solid waste and air permits discussed herein.

5. Bristol, VA is a “person” within the meaning of the CAA, 42 U.S.C. § 7602(e), and RCRA, 42 U.S.C. § 6903(15).

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1332, and 1367, as well as 42 U.S.C. §§ 7604(a) and 6972(a).

7. This Court has personal jurisdiction over Bristol, VA under Virginia Code § 8.01-328.1.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1), 42 U.S.C. §§ 7604(c)(1) and 6972(a).

9. The relief requested by Plaintiffs is authorized by the CAA, 42 U.S.C. § 7604(a); RCRA, 42 U.S.C. § 6972(a); and Virginia law.

10. Bristol, TN served on the necessary parties a notice of intent to bring its claims (the “NOI”), which is attached here as **Exhibit 4**, pursuant to CAA, 42 U.S.C. § 7604(a)(1) & (3), and RCRA, 42 U.S.C. § 6972(a)(1)(A), containing the notice requirements of 40 C.F.R. §§ 54.3 & 254.3. The NOI was served pursuant to 40 C.F.R. §§ 54.2 & 254.2.

11. The NOI was also mailed to counsel for Bristol, VA via certified mail, postmarked December 8, 2021, and received on December 15, 2021.

12. More than 90 days have passed since the recipients of the NOI received it.

13. The violations of CAA complained of in the NOI and in this Complaint are continuing and/or repeated and are likely to recur in future. The violations of RCRA complained of in the NOI and this Complaint are ongoing. As of the date of filing of this Complaint, neither the EPA nor DEQ have commenced a civil action to address the violations identified in the NOI and this Complaint.

14. The NOI also notified Bristol, VA of Bristol, TN’s intent to bring claims under Virginia law.

THE STATUTORY REGULATION OF THE LANDFILL

15. Bristol, TN brings this action under two federal laws that regulate the operation of the Landfill, the CAA and RCRA.

16. The CAA, passed by Congress in 1970, is intended “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare” 42 U.S.C. § 7401(b)(1). The CAA authorizes the development of comprehensive federal and state regulations to limit emissions from industrial sources of air pollution, to protect public health. *See* 42 U.S.C. § 7661a(d)(1).

17. The Landfill, which is a source of air emissions under the CAA, is subject to limitations on air emissions and technology-based standards promulgated by EPA under CAA-implementing regulations. In practice, these limitations are established in source-specific operating permits, also known as “Title V permits,” which contain all air pollution control requirements applicable to a particular stationary source, in this case, the Landfill. In addition, technology-based operating standards, which are based on an evaluation of the level of pollution reduction that can be attained through the use of particular technologies, are included in New Source Review (“NSR”) Permits.

18. In Virginia, DEQ has the authority, delegated by the EPA, to issue Title V and NSR permits. Title V and NSR permits issued by DEQ are based on standards promulgated by the EPA. As part of this delegation, DEQ has the power to enforce the violations of Title V and NSR permits, including by issuing Warning Letters, Notices of Violation, entering into Consent Orders, and bringing civil actions against permit holders.

19. In addition to DEQ’s ability to enforce compliance with CAA permits, violations of Title V and NSR permits are directly enforceable by citizens under the “citizen suit” provision of the CAA. *See* 42 U.S.C. § 7604. The CAA allows “any person” to commence a civil action

against a permit holder based on repeated violations of “an emission standard or limitation” contained in a permit issued by DEQ pursuant to the CAA. *See* 42 U.S.C. § 7604(a)(1) and (3).³ This Court has the authority “to enforce such an emission standard or limitation.” 42 U.S.C. § 7604(a). The purpose of the citizen suit provision is to allow private citizens to step into the shoes of Attorney Generals when agency enforcement is lacking. The citizen suit provision authorizes this Court to issue an injunction remedying violations of the CAA, to impose civil penalties as a result of the violations, and award Bristol, TN its costs of litigation, including reasonable attorneys’ and expert witness fees.

20. Congress passed RCRA in 1976. Its “primary purpose . . . is to reduce the generation of hazardous waste and to ensure the proper treatment, storage, and disposal of that waste which is nonetheless generated, ‘so as to minimize the present and future threat to human health and the environment.’” *Meghrig v. KFC W., Inc.*, 516 U.S. 479, 483 (1996) (quoting 42 U.S.C. § 6902(b)). RCRA also sets forth a framework for the management of non-hazardous solid wastes, such as garbage or trash deposited at landfills.

21. The EPA has delegated authority to DEQ to issue solid waste permits that govern operations of landfills in Virginia and enforce compliance with the permits and associated solid waste regulations.

22. Similar to the CAA, RCRA also includes a “citizen suit” provision, 42 U.S.C. § 6972. Like with the CAA, the citizen suit provision allows a person to commence a civil action

³ “‘An emission standard or limitation’ is defined in part as:

any other standard, limitation, or schedule established under any permit issued pursuant to subchapter V of this chapter or under any applicable State implementation plan approved by the Administrator, any permit term or condition, and any requirement to obtain a permit as a condition of operations[[]].

which is in effect under this chapter . . . or under an applicable implementation plan.” 42 U.S.C. § 7604(f)(4).

against “any person . . . who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment[.]” 42 U.S.C. § 6972(a).

23. This provision is known as RCRA’s “Endangerment Clause” and is essentially a “codification of the common law public nuisance.” *Fresh Air for the Eastside, Inc. v. Waste Mgmt. of New York, L.L.C.*, 405 F. Supp. 3d 408, 434 (W.D.N.Y. 2019).

FACTS

I. The History of the Permits Governing the Operation of the Landfill.

A. The Solid Waste Permits.

24. There are three landfill areas located within the corporate limits of Bristol, VA and owned by Bristol, VA. The first landfill started accepting solid waste in approximately 1977. All three landfills accepted waste that includes municipal solid waste and special waste such as tires, white goods, wood waste, yard waste, and construction and demolition material. The three landfills are located on contiguous parcels of land. Each of these landfills has its own unique operational history and status.

25. The first landfill was permitted by DEQ under Solid Waste Permit No. 221 (“Landfill No. 221”), and Bristol, VA accepted waste at this landfill from 1977 until 1986. Landfill No. 221 is now closed and capped, which means that a solid layer of material has been placed over the top of Landfill No. 221 to prevent water from getting into it.

26. The second landfill was permitted by DEQ under Solid Waste Permit No. 498 (“Landfill No. 498”), and Bristol, VA accepted waste at this landfill from 1986 until 2002. Upon information and belief, Landfill No. 498 remains open but is inactive and not accepting waste. Instead, landfill mining is taking place inside Landfill No. 498. The mining excavates material from soil cover in Landfill No. 498 and processes it through a rotary trommel screen, which

separates soil from the waste. The reclaimed waste is being disposed into the third landfill as discussed herein. Bristol, VA is mining Landfill No. 498 so that it can be used in the future as a construction and demolition debris landfill.

27. The third landfill—the Landfill or “Landfill No. 588”—is actively taking waste pursuant to Solid Waste Permit No. 588 (“SWP 588”) issued by DEQ on February 15, 1996, pursuant to the requirements of the Virginia Solid Waste Management Act, Va. Code § 10.1-1408.1, and its implementing regulations, 9 VAC 20-80-10, *et seq.* The Landfill was created through the reclamation of an abandoned mining quarry and has been accepting waste since March 1998. The Landfill is open and, upon information and belief, is the only landfill owned by Bristol, VA currently permitted to accept waste.

28. SWP 588 requires Bristol, VA, as the permittee, to “at all times properly operate and maintain all units (and related appurtenances) which are installed or used by the permittee to achieve compliance with the operations manual and the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing, and training, and adequate laboratory and process controls, including appropriate quality assurance/quality control procedures.” *See Exhibit 5* (Permit Module I, General Permit Conditions, I.B.5).

29. SWP 588 incorporates requirements of the Virginia solid waste regulations, including the requirement to control odors at the Landfill “so they do not constitute nuisances or hazards.” 9VAC20-81-140A.10.

30. SWP 588 requires Bristol, VA, as the permittee, to apply sufficient daily cover to control odors from the Landfill. *See Ex. 5* (Permit Module I, General Permit Conditions, I.F.4).

31. SWP 588 requires Bristol, VA to operate a leachate collection system at the Landfill. The leachate collection system is required to function as a closed system. Under normal operating conditions, leachate does not come into direct contact with ambient air. However, when components of the system, such as pumps, malfunction or are mismanaged, leachate can migrate into the environment and produce detectable odors and emissions.

32. Landfill leachate is a liquid that has passed through or emerged from solid waste. At the Landfill, collected leachate from Landfills Nos. 498 and 588 is pumped to the local sanitary sewer collection system and treated at the Bristol Regional Wastewater Treatment Plant located in Bristol, TN. Approximately 300,000 gallons of leachate is pumped to the treatment plant daily. Like all Class I landfills, the Landfill is required to be lined. Because the Landfill is built in an old quarry, however, it is subject to more stringent liner requirements, including a requirement to ensure that there is a sidewall liner. *See Ex. 5* (Permit Module I, General Condition 1.B.13).

B. The Air Permits.

33. In addition to SWP 588, Bristol, VA operates the Landfill under two air permits: the Title V Permit and the New Source Review (“NSR”) Permit. Both of these permits require Bristol, VA to strictly comply with federal regulations relating to the national emission standards for hazardous air pollutants for municipal solid waste landfills, 40 C.F.R. 63 Subpart AAAA, and New Source Performance Standards, 40 C.F.R. 60 Subpart WWW, and Virginia regulations at 9 VAC5.

34. The Title V Permit No. SWRO11184 was most recently issued by DEQ on March 13, 2021,⁴ pursuant to the requirements of (a) Title V of the CAA, (b) the Air Pollution Control

⁴ The prior version of the permit was effective March 13, 2016.

Law of Virginia, Va. Code § 10.1-1322, and (c) the Virginia regulations for the control and abatement of air pollution, 9 Va. Admin. Code §§ 5-80-50 to 5-80-300. *See Exhibit 6.*

35. The NSR Permit was issued to Bristol, VA on July 7, 2003, and was most recently amended on September 30, 2015. *See Exhibit 7.* The NSR Permit was issued pursuant to the requirements of (a) Title V of the CAA, (b) the Air Pollution Control Law of Virginia, Va. Code §10.1-1322, and (c) the Virginia regulations for the control and abatement of air pollution, 9 VAC 5-80-50 to 5-80-300. The NSR Permit authorizes Bristol, VA to construct and operate a municipal solid waste landfill and one landfill gas flare.

1. Air Permit Requirements Specific to Management of the Gas Created by the Landfill.

36. All landfills produce gas, which is a natural byproduct of decomposition of organic material, which consists of methane, carbon dioxide, and non-methane organic compounds. According to EPA, non-methane organic compounds in landfill gas include volatile organic chemicals (“VOCs”), hazardous air pollutants (“HAP”), odorous compounds, such as hydrogen sulfide, that smell of rotten eggs, and other reduced sulfur compounds. According to the U.S. Agency for Toxic Substances and Disease Registry (“ATSDR”), non-methane organic compounds commonly found in landfills include Acrylonitrile, Benzene, 1,1-dichloroethane, 1,2-cis dichloroethylene, Dichloromethane, Carbonyl sulfide, Ethylbenzene, Hexane, Methyl ethyl ketone, Tetrachloroethylene, Toluene, Trichloroethylene, Vinyl chloride, and Zylenes.

37. Pursuant to Condition 2 of Title V Permit and NSR Permit, Bristol, VA is required to install and operate a landfill gas collection and control system (“LGCCS”) to capture landfill gases and treat and combust those gases. The LGCCS, if working properly, is intended to control and minimize subsurface gas and surface emissions migrating from the Landfill. Each of Bristol, VA’s three landfills are equipped with LGCCS systems.

38. An active LGCCS was constructed in Landfill No. 221 in July 2000 and included 15 vertical gas extraction wells, header and lateral piping, a condensate trap, and a blower/flare skid. Because wells contain water, seven vertical well liquid removal pumps were installed with the LGCCS.

39. This LGCCS system was expanded into Landfill No. 498 in October 2002, including the installation of six vertical extraction wells, a condensate sump, a self-draining condensate trap, associated header and lateral piping, and liquid removal pumps.

40. Landfill No. 588 was required to install an active LGCCS by May 2001. Additional wells have been added to the LGCCS throughout the Landfill's life as the elevation of the waste in Landfill No. 588 increased.

41. The LGCCS delivers gas from the Landfill to an on-site power plant owned and operated by a third party, where the gas is combusted in a turbine to produce electricity. When the power plant is unavailable, the landfill gas is being combusted in the flare at the Landfill.

42. The Title V and NSR Permits, and the associated federal and state regulations, impose the following requirements on Bristol, VA:

- Bristol, VA is required to operate its LGCCS so as to minimize off-site migration of subsurface gas. (Permit Conditions 2f).
- Bristol, VA is required to operate each interior wellhead in the LGCCS under negative pressure, except as provided in 40 C.F.R. 60.34f(b). (Permit Conditions 2d).
- Bristol, VA is required to operate each interior wellhead in the LGCCS with a landfill gas temperature of less than 55°C (131 °F). (Permit Conditions 2e).
- Bristol, VA is required to operate each interior wellhead in the LGCCS with an oxygen content of less than 5% as determined by an oxygen meter using EPA Method 3A or 3C (reference 40 C.F.R. 60, Appendix A) except as specified in 40 C.F.R. 60.37f(a)(2)(ii), unless an alternative test method is established as allowed by 40 C.F.R. 60.38f(d)(2). (Permit Conditions 2e (ii)).

43. Bristol, VA is required to take corrective action if any of these requirements are not met. *See Ex. 6*, Title V Permit Condition 2. It is required to monitor the following operational parameters of the LGCCS each month: (i) gauge pressure in the collection header at each individual well; (ii) LFG temperature in each well; (iii) oxygen concentration in each well; and (iv) cover integrity of the landfill. *See Ex. 6*, Title V Permit Condition 9; *Ex. 7*, NSR Permit Condition 6.

44. Bristol, VA is required to perform a visible emissions observation on the open flare once each calendar month when the flare is operating. *See Ex. 6*, Title V Permit Condition 14; *Ex. 7*, NSR Permit Condition 10.

45. Bristol, VA also is subject to other monitoring, recordkeeping, testing, and reporting requirements.

II. Bristol, VA's Documented Failures to Comply with its Permit Requirements.

A. Bristol, VA's violations of the air permits.

46. The provisions of the air and solid waste permits address management of odor associated with the Landfill. In the fall of 2020, DEQ noted an uptick in odor complaints associated with the Landfill and, in January 2021, requested that Bristol, VA submit information regarding actions taken to address Landfill odors. Bristol, VA provided the requested information, which revealed a number of recordkeeping violations and prompted DEQ to visit the Landfill and subsequently issue a NOV on February 22, 2021 (the "First CAA NOV"). *See Exhibit 8*.

47. In the First CAA NOV, DEQ determined that Bristol, VA violated conditions of the Title V and NSR Permits because it failed to perform monthly visible emission observations of the Landfill gas flare, maintaining startup, shutdown or malfunction operational records, and submitting the required Startup, Shutdown, and Malfunction ("SSM") forms to DEQ. DEQ asked

Bristol, VA to respond to the First CAA NOV within 10 days and required Bristol, VA to correct the violations.

48. On March 4, 2021, Bristol, VA responded to the First CAA NOV, acknowledging that “visual observations of the gas flare were not recorded during the months indicated,” and that “[i]n the future, the Bristol Virginia Integrated Solid Waste Management Facility will ensure that the flare is operated for a sufficient duration each month so that a visual emission recording can be performed.” *See Exhibit 9* (Letter from Eads to DEQ (March 4, 2021)). Bristol, VA also added that the Landfill is committed to ensuring that all future required submittals will be accurate and provide complete information, in accordance with its permit. *Id.* Bristol, VA asked its consultant, Draper Aden Associates, to assist its staff with preparing the required reports going forward. *Id.*

49. DEQ continued investigating the Landfill and uncovered numerous other violations of the air permits. On August 20, 2021, DEQ issued a second CAA NOV (the “Second CAA NOV”), citing Bristol, VA for multiple exceedances of gas wellhead temperatures; multiple exceedances of oxygen concentrations in gas wellheads; and multiple instances of positive pressure (as opposed to the required negative pressure) in gas wellheads.⁵ *See Exhibit 10.* DEQ asked Bristol, VA to respond to the Second CAA NOV within 10 days and required it to correct the violations.

50. On August 27, 2021, Bristol, VA responded to DEQ’s Second CAA NOV, acknowledging the violations and explaining that it did not know when some of the elevated temperature wells would attain compliance. Bristol, VA also indicated that it was expanding the LGCCS, which was expected to be completed by November 2021. In addition, Bristol, VA

⁵ When there is negative pressure in a well, there is a vacuum that allows the gas to be collected rather than released to the atmosphere. When there is positive pressure in a well, the landfill gas is not being collected effectively.

explained that it was in the process of hiring additional personnel to ensure proper operation, maintenance, and monitoring of the LGCCS at the Landfill. At the same time, Bristol, VA acknowledged that these actions were not enough to correct the violations and stated that the Landfill would continue to exceed the temperature, oxygen, and pressure requirements. *See Exhibit 11* (Letter from Eads (Aug. 27, 2021)).

51. On September 22, 2021, DEQ issued Bristol, VA a third CAA NOV (the “Third CAA NOV”) alleging the same violations as those alleged in the Second CAA NOV: multiple exceedances of gas wellhead temperatures; multiple exceedances of oxygen concentrations in gas wellheads; and multiple instances of positive pressure in gas wellheads. *See Exhibit 12*. DEQ also alleged that Bristol, VA repeatedly failed to monitor the wellheads for temperature, oxygen, and pressure and expand the LGCCS when temperature, oxygen, and pressure exceedances persisted for over 15 days. In addition, DEQ alleged that Bristol, VA failed to conduct visible observations of the flare, the same violation identified in the First CAA NOV. DEQ asked Bristol, VA to respond to the Third CAA NOV within 10 days and required it to correct the violations.

52. On December 10, 2021, DEQ issued Bristol, VA a fourth CAA NOV (the “Fourth CAA NOV”) alleging that the Landfill continued to repeatedly exceed gas wellhead temperatures; oxygen concentrations in gas wellheads; and reported multiple instances of positive pressure in gas wellheads, in violation of permit requirements. *See Exhibit 13*. DEQ also alleged that Bristol, VA continued to fail to monitor the wellheads for temperature, oxygen, and pressure. These violations were also the subject of the DEQ’s Second and Third CAA NOVs. DEQ asked Bristol, VA to respond to the Fourth CAA NOV within 10 days and required it to correct the violations.

53. The violations set forth in DEQ’s four CAA NOVs continue. As recently as May 3, 2022, DEQ issued a fifth CAA NOV (the “Fifth CAA NOV”), stating that temperature

exceedances occurred from January through April 2022. *See Exhibit 14*. Indeed, according to data submitted by Bristol, VA to DEQ on May 13, 2022, temperature exceedances were recorded in multiple wells in January, February, March, April, and May 2022. *See Exhibit 15* (May 13, 2022 Status Report).

54. Although the CAA NOVs require that Bristol, VA return to compliance, Bristol, VA has not.

B. Bristol, VA's violations of SWP 588.

55. As early as December 2020, Bristol, VA's staff at the Landfill noticed foul odors coming from the gradient control system. As the staff stated, "occasionally a 'slug' of foul smelling material will be dislodged from the sump, and that it will cause an awful odor." DEQ was made aware of this issue, and the Landfill staff indicated they were investigating it.

56. On January 11, 2021, DEQ issued Bristol, VA a Deficiency Letter alleging that the Landfill violated two conditions of its SWP 558. First, DEQ indicated that, based on more than 30 recent odor complaints filed against the Landfill, and in accordance with 9VAC20-81-200.D, Bristol, VA was required to develop an odor management plan to address odors that may impact individuals beyond the facility boundaries. Second, DEQ indicated that Bristol, VA was in violation of a requirement to effectively control odors in accordance with 9VAC20-81-140.A. *See Exhibit 16* (DEQ Deficiency Letter (Jan. 11, 2021)). DEQ requested that Bristol, VA provide a response within 20 days.

57. On January 13, 2021, DEQ asked Bristol, VA to come up with a mapping system to track odor complaints.

58. On April 1, 2021, after DEQ visited the Landfill, it provided Bristol, VA a summary of observations, which flagged the gradient control sump pump system as leaking blackish brown

liquid with strong odor. DEQ asked that Bristol, VA review the findings and discuss them with consultants to take further action.

59. On May 27, 2021, DEQ issued Bristol, VA a Warning Letter identifying violations of Virginia Solid Waste Management Regulations, 9VAC20-81-100.B, and SWP 588 Module 1, General Conditions. According to the Warning Letter, a pump used to convey gradient control water (leachate) from the Landfill to the sanitary sewer system was not functioning properly. DEQ inspectors also described the leachate center pipe as broken and indicated that a bucket had been placed over the broken portion of the pipe. DEQ observed odor coming from the gradient control water that appeared soon after the pump was engaged. DEQ also observed Landfill gas odor that seemed to come from the pipe area. During the inspection, Bristol, VA representatives at the Landfill indicated that the needed materials to repair the pipe were available, but they did not take time to actually repair the pipe or the pump. *See Exhibit 17* (DEQ Warning Letter (May 27, 2021)).

60. The May 27, 2021 Warning Letter required Bristol, VA to correct the violation within 30 days, or notify DEQ if corrective action would take longer than 90 days.

61. On June 15, 2021, Bristol, VA responded to DEQ's May 27 Warning Letter, acknowledging that the gradient control pump "is leaking, and the City is in the process of procuring a replacement pump. ... We hope to have the pump replaced within 60 days." *See Exhibit 18* (Bristol VA Letter (June 15, 2021)).

62. As of August 2021, Bristol, VA had not replaced the pump. On August 31, 2021, DEQ requested that Bristol, VA provide a status update regarding repairing the pump, as the repairs to the pump were overdue. In response, Bristol, VA's Environmental, Health, and Safety

Compliance Officer indicated he did not know the status of the repairs. *See Exhibit 19* (Correspondence (Aug. 31, 2021)).

63. In a report dated August 31, 2021, and submitted to DEQ, Bristol, VA’s consultant acknowledged that Bristol, VA “has been working to address concerns with maintenance of the gradient control system and will continue routine maintenance or replace the gradient control pumps as necessary.” *See Exhibit 20* (CASE Report – 2016-2020, Appx. A, p. 4 (Aug. 31, 2021)).

64. On November 5, 2021, more than 160 days since issuing the May 27, 2021 Warning Letter, DEQ sent an email to Bristol, VA reminding it of the inoperable pump and requesting that it be addressed immediately. DEQ explained that the situation with the pumps was “dire” and “serious.” DEQ stated that it could not “stress to [Bristol, VA] enough the urgency that is needed to address these absolutely critical infrastructure systems, immediately.” *See Exhibit 21* (Correspondence (Nov. 5, 2021)).

65. On December 7, 2021, DEQ issued Bristol, VA a NOV (the “First RCRA NOV”) for the inoperable pump, citing violations of the Virginia Waste Management Regulations, 9 VAC 20-81-100(B)⁶, and SWP 588⁷ Permit Condition Module I, Section I(B)(5), which require proper operation and maintenance of all Landfill units and associated facilities. DEQ explained that during its November 8, 2021 site visit, two “pumps intended to convey leachate and gradient control to the sanitary sewer system were not functioning properly, and the gradient control pump had not been replaced.” *See Exhibit 22* (DEQ December 7, 2021 NOV).

⁶ According to this provision, all solid waste disposal facilities shall be maintained and operated in accordance with the permit issued pursuant to this regulation, and in accordance with the approved design and intended use of the facility.

⁷ According to this provision, the permittee shall at all times properly operate and maintain all units (and related appurtenances) which are installed or used by the permittee to achieve compliance with the operations manual and the conditions of this permit.

66. On November 22, 2021, Bristol, VA held an emergency meeting of its city council to address the pump issue. During the meeting, Bristol VA's city council approved a \$228,656.00 contract with Charles R. Underwood Inc. to repair the pump. The work was supposed to be completed by January 2022.

67. Bristol, VA continues to operate the Landfill using deficient equipment. At the end of February 2022, an overflow of stormwater mixed with leachate took place at Landfill No. 498. The overflow was a result of pump failures and a closed valve from the bermed area that captures surface stormwater and seeps. On April 25, 2022, DEQ issued a second RCRA NOV (the "Second RCRA NOV") alleging this, as well as other violations of the Virginia Solid Waste Management Regulations relating to leachate management, inadequate cover, and inadequate stormwater and erosion and sediment controls in violation of SWP 498. *See Exhibit 23* (DEQ April 5, 2022 NOV).

68. Portions of the Landfill lack adequate cover, which is contributing to the noxious odors. Following DEQ's inspection in December 2020, it issued Bristol, VA a Deficiency Letter based on the inadequate cover and indicating that odors may be due in part to inadequate cover. *See Exhibit 24* (DEQ Inspection Report (Dec. 21, 2020)).

69. The lack of proper cover remained a concern going into the summer of 2021. On July 9, 2021, DEQ unsuccessfully inquired with Bristol, VA regarding the depth of cover at the Landfill. Later in August, Bristol, VA indicated that the Landfill staff "has continued to increase daily cover in an effort to prevent landfill gas escaping from the landfill." *See Exhibit 25* (Communication from Eads (Aug. 23, 2021)).

70. During a September 2021 meeting, DEQ explained that Bristol, VA "added additional cover at the landfill and hired more personnel to focus on better coverage."

71. Despite Bristol, VA's assurances in July and August 2021 that "spreading additional daily cover have been high priority for our staff," during DEQ's visit at the Landfill on November 4, 2021, inadequate cover was still observed in Landfill No. 498. *See Exhibit 26* (June 21 Monthly Report – Odor Management Plan (July 31, 2021)); *Exhibit 27* (July 21 Monthly Report – Odor Management Plan (Aug. 31, 2021)); *Exhibit 28* (DEQ Notes for City of Bristol Landfill, SWP 498, Site Visit 11/4/21).

72. In March 2022, DEQ's inspection of Landfill No. 498 revealed exposed and uncovered solid waste in areas where landfill mining activities have been idle since DEQ's last visit in November 2021. DEQ issued Bristol, VA the Second RCRA NOV for these cover deficiencies.

73. During April 18-21, 2022, DEQ received 58 odor complaints related to the Landfill. When DEQ visited the Landfill to investigate the source of odor, DEQ observed uncovered and exposed solid waste. On May 3, 2022, DEQ issued a Warning Letter, alleging cover deficiencies. *Exhibit 29*. The Warning Letter states that the active working face at the landfill was not confined to the smallest area practicable, and that there was uncovered and exposed solid waste in several locations at the Landfill, in violation of SWP 588. The Warning Letter further provides that the Landfill failed to address the cover deficiencies or take any of the other remedial actions outlined in its Odor Management Plan, despite receiving 58 odor complaints between April 18 and April 21, 2022. *Id.*

74. Although the Warning Letters state that Bristol, VA is required to return to compliance, Bristol, VA has not returned to compliance.

III. Other Landfill Deficiencies.

A. Bristol, VA's failure to meet deadlines.

75. Even before DEQ issued its First CAA NOV, it required Bristol, VA to undertake corrective action measure to repair and enhance the LGCCS. According to Eads, a third-party consultant identified deficiencies in the LGCCS, including compromised landfill gas wells and condensate lines and wells containing water, as a likely primary source of odors from the facility. *See Exhibit 30* (Eads Presentation at slide 16). As of February 9, 2021, the corrective action was underway and should mitigate the odor issues and bring the Landfill into compliance with the permits. *See Exhibit 31* (Email from D. Manweiler (Feb. 9, 2021)); *see also Exhibit 32* (Update from Eads (Dec. 30, 2020)).

76. In reality, however, Bristol, VA only issued a Request for Proposal (“RFP”) to undertake the well drilling on July 16, 2021. The work to enhance the LGCCS by adding more wells was not started until the fall of 2021.

77. In September 2021, to address continuing violations of wellhead temperature and other requirements and associated malodors, Bristol, VA started installation of 21 additional landfill gas wells to be connected to the existing LGCCS. The purpose of adding new wells was “to reduce the emissions of odors” and “pull high temperature gas and water from the area of the suspected subsurface reaction.” *See Exhibit 33* (Letter from Eads to DEQ (Sept. 30, 2021)). Bristol, VA promised that “additional wells will alleviate the odor by capturing more of the gas that is escaping,” *see Exhibit 34* (Eads email to John Warner (Oct. 25, 2021)), and “hope[ed] citizens will be able to see a decrease in odors 4-6 weeks after the completion of the gas well installation.” *See Ex. 25* (Bristol, VA Letter (Aug. 23, 2021)). The initial installation was scheduled to be complete on October 15, 2021. At that time, however, DEQ stated that “nothing

has yet been accomplished to mitigate the odors.” See **Exhibit 35** (Correspondence from S. Daniel to J. Hurst (Oct. 18, 2021)).

78. Bristol, VA then proceeded to connect the wells to the LGCCS. After that, Bristol, VA moved to install pumps to pump out water from the wells. These combined steps were “expected to substantially reduce odors from the landfill.” See **Ex. 30**, p. 19.

79. There were continuous delays in the installation of the wells. Construction did not even begin until November 6, 2021. While it was substantially completed on December 15, 2021, these wells continue to undergo “tuning and balancing.” **Exhibit 36** (April 15, 2022 Status Report). Some wells continue to exceed the required temperatures. Instead of working to solve the problem, on March 8, 2022, Bristol, VA again⁸ requested that EPA approve the Landfill’s operation of gas wells 31R and 37 at higher temperatures. These wells continue to be hot.

B. Complaints regarding the odors from the Landfill.

80. As early as April 2019, DEQ asked Bristol, VA to track complaints regarding odors from the Landfill. Later, in August 2020, DEQ acknowledged the “significant” number of odor complaints from the Landfill and required Bristol, VA to submit an Odor Control Plan. **Exhibit 37** (DEQ Letter from D. Scott (Aug. 13, 2020)). Bristol, VA did not develop such a plan. In December 2020, DEQ again asked Bristol, VA to develop an odor management plan. **Ex. 24** (DEQ Air Inspection Report (Dec. 21, 2020)).

81. On January 11, 2021, DEQ reiterated this request by issuing Bristol, VA a Deficiency Letter, referencing a significant number of odor complaints (over 30 since mid-November 2020) and requiring the Landfill to develop an odor management plan. Virginia

⁸ Bristol, VA submitted its first request to continue operating hot wells in July 2021 and received EPA’s approval in August 2021.

regulations require landfills to prepare an odor management plan within 90 days when “an odor nuisance or hazard is created.” 9VAC20-81-200.D. By issuing the Deficiency Letter, DEQ recognized the Landfill was such a nuisance and/or hazard. As clearly stated in the deficiency letter, Bristol, VA was required to develop such a plan within 90 days – or by April 11, 2021 – pursuant to 9VAC20-81-200.D. Bristol, VA failed to submit the odor management plan as required by April 11.

82. DEQ found the proposed plan submitted by Bristol, VA in March 2021 to be inadequate, asked it to be strengthened on numerous points, and asked Bristol, VA to take immediate action to develop an adequate plan. **Exhibit 38** (Email from C. Bazyk to Draper Aden Associates (March 17, 2021)); **Exhibit 39** (Email from S. Martin (May 24, 2021)).

83. Bristol, VA submitted the final Odor Management Plan on June 7, 2021. *See Exhibit 40.*

84. The Odor Management Plan identified immediate remediation actions that Bristol, VA should take within a few days of receiving an odor complaint, including:

- Install intermediate cover or increase the thickness of daily cover at the Landfill.
- Reduce the size of the working face.
- Perform minor repairs on the existing LGCCS to increase vacuum within the Landfill.
- Increase dewatering of the LGCCS extraction wells to increase vacuum within the Landfill.
- Pump ambient air into the leachate pump station to minimize anaerobic conditions.
- Repair leachate seeps.
- Stop or reduce the disposal of waste streams that may be causing particular odors.
- Close and/or seal manhole covers and access doors related to the leachate and gradient water collection and conveyance systems.

See Ex. 40, Odor Management Plan, p. 5.

85. Many of these measures amounted to monitoring and maintaining the Landfill and its LGCCS in a way that should have been done all along to remain in compliance with the Landfill's air and waste permits. Despite Bristol, VA's purported commitment to these measures, odor complaints continued. The Odor Management Plan also listed other, long term remedial actions:

- Install additional landfill gas extraction wells and/or collection system piping to increase the volume of landfill gas collected and vacuum within in the Landfill.
- Install odor masking or neutralizing systems in strategic locations along the perimeter of individual landfills and/or property boundary.
- Treat gradient water and/or leachate before the liquids leave the Landfill property.
- Treatment could include air stripping of the liquids, aeration, the addition of neutralizing chemicals to the liquid, and/or extracting air from the sewer pipe and flaring the collected gases.

86. In May 2021, Bristol, VA reported to DEQ that the Landfill received 13 odor complaints that month. The description of odors ranged from the typical garbage smell to chemical odors to gas. **Exhibit 41** (May 2021 Odor Management Plan Report). Despite the new plan, in June 2021, Bristol, VA reported a twofold increase in the number of complaints made about odors from the Landfill (26 odor complaints). **Ex. 26** (June 2021 Odor Management Plan Report). In July 2021, Bristol, VA reported six complaints. **Ex. 27** (July 2021 Odor Management Plan Report). But in September 2021, Bristol, VA received 439 complaints. **Exhibit 42** (September 2021 Odor Management Plan Report). In November 2021, 2,147 complaints were received. **Exhibit 43** (November 2021 Odor Management Plan Report). Complaints continue up to this day.

87. It is clear that Bristol, VA has not been implementing the Plan and performing the immediate remediation actions including adding cover and/or increasing the thickness of daily cover, and reducing the size of the working face. DEQ cited Bristol, VA for failure to implement the Odor Management Plan in the May 3, 2022 Warning Letter.

C. Bristol, VA's failure to implement consultant recommendations.

88. As outlined above, there is a continuing pattern of failure to properly maintain the Landfill. Bristol, VA regularly failed to conduct required monitoring, and to maintain equipment and pollution control systems such as the landfill gas and leachate collection systems. Even where maintenance work was conducted, it was only completed after prompting from DEQ, and even then it was often delayed or only partially completed.

89. Bristol, VA also failed to implement the maintenance recommendations of its consultants. For example, in June 2019, SCS Engineers ("SCS") prepared an Independent Cost Analysis Report analyzing the circumstances at the Landfill. **Exhibit 44**. SCS identified a number of overlooked maintenance issues warranting attention. For example, a 200,000-gallon leachate aboveground storage tank ("AST") of questionable integrity was identified as located near the entrance to the Landfill. As explained in the Report, Bristol, VA "acknowledges [the tank] should be rehabilitated and repaired to serve as emergency storage contingency or the City should demolish and remove this underutilized structure." *Id.* at 16. Despite this recommendation, upon information and belief, the tank has been neither repaired nor removed. In early 2021, BVUA noted to DEQ that the Landfill could use a large tank – like the 200,000-gallon AST – for pretreatment of its wastewater before discharging it to the wastewater treatment plant jointly owned by BVUA and Bristol, TN. **Exhibit 45** (Email from D. Bowman to J. Hurst (Jan. 12, 2021)). In the summer of 2021, DEQ was concerned that a tank release took place at the Landfill. **Exhibit 46** (Email from R. Pritchard to Z. Mitchell (June 17, 2021)).

90. SCS also identified the "Leachate Pumping Station" as being "in need of replacement and updating at a minimum" and that the "Programmable Logic Controller (PLC) is outdated and the system has not been updated since initial waste placement operations commenced over 20 years ago." **Ex. 44**, p. 9. Next, SCS identified insufficient drainage, slow throughput and

old equipment at the composting area; storage and waste collection containers which are rusted, unsafe, and are beyond the point of repair and require replacing; and indications of general equipment depreciation. *Id.*

91. Bristol, VA did not take any actions to address the issues identified in the SCS report. In fact, in a January 27, 2021 email from Eads to the Bristol, VA City Council, Eads said:

As I have reflected on last night's meeting, it has become apparent people have forgotten we have had studies conducted on the landfill which addresses (sic) most of the issues discussed last night. It's time to start listening to experts about the operations and finances of the landfill. SCS has prepared roads maps for us to follow. To date, we have chosen to ignore expert advice. I know SCS has not provided the answers some of you all are looking for as it relates to the landfill, but they do this for a living and should be given credit for the knowledge they bring to the table.

Exhibit 47.

92. More recently, in April 2021, Eads provided a long list of items "the landfill needs in order to operate effectively and efficiently," including resolving liner issues if there is a leak; hiring a Landfill engineer/manager, identifying and resolving landfill cover issues, hiring eight staff members to comply with the permit, and other items. **Exhibit 48** (Email from Eads (Apr. 22, 2021)).

D. Bristol, VA's failure to properly staff and fund the Landfill.

93. The Landfill has been chronically understaffed and underfunded, which has led to the myriad of permit violations and harms experienced by Bristol, TN. Even back in 2017, the Landfill was deemed a "financial burden to the City." **Exhibit 49** (Email from A. Hubbard (Sept. 20, 2017)). In May 2021, following DEQ's January 11 Deficiency Letter, the First CAA NOV, and the May Warning Letter, Bristol, VA started to look for an Environmental and Safety Compliance Officer. **Exhibit 50** (Bristol Landfill Facility Update (May 24, 2021)). In September 2021, Bristol, VA was also looking to fill the Landfill Director position. **Exhibit 51** (Bristol

Landfill Facility Update (Sept. 27, 2021)); **Exhibit 52** (Bristol Landfill Facility Update (Sept. 13, 2021)).

94. After DEQ pointed out reporting violations at the Landfill, Bristol, VA terminated the responsible employee. Eads indicated he was in the process of learning about all of the mistakes the employee created at the Landfill. **Exhibit 53** (Email from Eads (July 14, 2021)). In October 2021, Eads publicly acknowledged that the Environmental Health and Safety staff had not been reporting accurate information on official reports submitted to DEQ, including elevated landfill wellhead temperatures.⁹ Reporting such information is required by the Landfill's air permits as well as federal and state regulations. As a result of failure to submit accurate reports, Bristol, VA overlooked a subsurface reaction at the Landfill, which is being manifested by wells with elevated temperatures (hot wells). Eads indicated that "[t]he information that was inaccurately reported [to DEQ] is significant because it could indicate problems at a well site or within the landfill gas collection system." *Id.* Eads continued: "That matters because once you start seeing higher temperatures in the wells there is something going on, and the decomposition is going faster than what the normal decomposition rate should be." *Id.* He also acknowledged that inaccurate reporting in February 2021 slowed its response to the problem: "I think, if we would have known the gas wells were hot and *we had been reporting that*, DEQ and our consultants would have said we need to start putting wells in sooner," Eads said. *Id.* (emphasis added). Indeed, Bristol, VA was well aware that "[w]hen a landfill's temperature begins to elevate significantly, rapid response is necessary." **Exhibit 54** (Letter from Eads to Community (Oct. 24, 2021), p. 4.)

⁹ See D. McGee, *Bristol, Va., Landfill Again Cited by DEQ for Inaccurate Info that Slowed Response*, Bristol Herald Courier (Oct. 8, 2021), https://heraldcourier.com/news/local/bristol-va-landfill-again-cited-by-deq-for-inaccurate-info-that-slowed-response/article_a7414d79-862a-543e-b1c0-9123ee65cf19.html

95. Violations cited in DEQ's First CAA NOV as well as the August 24, 2021 Warning Letter are indicative of Bristol, VA's poor handle over basic administrative and recordkeeping aspects of the Landfill operations. DEQ cited Bristol, VA for violations similar to the ones listed in the Second CAA NOV on several occasions in 2017 and 2018. On April 25, 2022, DEQ issued Bristol, VA the Second RCRA NOV, similarly citing it for failure to include in the monthly inspection records for Landfill No. 498 information regarding erosion and sediment controls, storm water conveyance system, safety and emergency equipment, internal roads, and operating equipment.

96. DEQ has also repeatedly cited Bristol, VA for crooked well casings on groundwater monitoring wells located in Landfill No. 498 and in Landfill No. 588. DEQ Warning Letter (June 26, 2018); DEQ Warning Letter (SWP 498) (June 26, 2018); DEQ Warning Letter (Sept. 20, 2018); DEQ Warning Letter (SWP 498) (Sept. 21, 2018).

97. These violations, as well as violations of the same legal requirements for which DEQ cited Bristol, VA in at least three separate CAA NOVs, are indicative of a lack of due care on the part of Bristol, VA in operating and maintaining the Landfill.

98. Bristol, VA's own statements, including its response to DEQ's Third CAA NOV, show that the Landfill has been understaffed.

99. In Eads' January 27, 2021 email to Bristol, VA's City Council, he stated:

"This afternoon, I had a phone conference with Ernie Hoch of Draper Aden. He watched the discussion last night, and that's all I will say about his thoughts in writing. He has reviewed financials, met with staff, looked at the operations of the landfill and made initial assessments of the situation. ***He says we are not providing the landfill staff the necessary equipment, tools and funds to operate efficiently and effectively.***"

Ex. 47 (emphasis added).

100. Inadequate staffing also contributes to Bristol, VA's failure to properly cover the Landfill, which leads to violations of solid waste regulations. In a September 2021 update about the Landfill, DEQ explained that Bristol, VA "added additional cover at the landfill and hired more personnel to focus on better coverage," and that DEQ staff member "believes they have 70-80% cover now." Bristol Landfill Discussion Meeting 9/1/21.

101. Only recently has Bristol, VA "hired additional personnel to ensure the proper operation, maintenance, and monitoring of the gas collection system and is working with its consultants; SCS Inc. and Draper Aden Associates to minimize missed gas well monthly monitoring instances." **Exhibit 55** (Letter from Eads to DEQ (Sept. 30, 2021)).

102. Even through Bristol, VA's statements suggest that it has made staffing progress at the Landfill, it continues to be inadequate. In November 2021, Bristol, VA was still looking for candidates to fill in the Public Works Director and Solid Waste Disposal Fund Director positions. **Exhibit 56** (Minutes, Regular Meeting of the City of Bristol, VA City Council (Nov. 23, 2021)). As of May 2022, neither of these positions had been filled. In fact, the Landfill now also seeks to hire an Environmental Safety and Compliance Officer, a position that was recently vacated. *See* The City of Bristol, VA, Job Opportunities, <https://www.bristolva.org/jobs.aspx> (last visited May 23, 2022).

103. In February 2022, Eads stated that:

We don't have the staff to handle all of our problems at one time. We have had 2 people quit over the past 3 days and two more are out as well right now. It's becoming critical, from an operational standpoint, that we get more people at a higher wage in order to manage the problems associated with the landfill.

Exhibit 57 (Email titled Chimneys at the Landfill (Feb. 9, 2022)).

IV. The Consequences of Bristol, VA's Failure to Operate and Maintain the Landfill.

A. Subsurface Reactions/Chimneys.

104. Limited investigations and sampling conducted by DEQ, EPA, Bristol, TN, Bristol, VA and the Expert Panel suggest that one or more subsurface reactions are occurring at the Landfill. These reactions are likely occurring near the hot wells. The reactions contribute to the noxious odors coming from the Landfill. These odors in ambient air near the hot wells have been characterized as “chemical in nature,” “a chemical-smelling ‘smoke’,” and “rotting or sour garbage.” **Ex. 3**, p. 3 (Expert Report). The smell was ‘readily apparent’ when the Expert Panel visited the Landfill. *Id.* Bristol, VA knew that one or more subsurface reactions have been occurring at the Landfill as early as 2018, but did not investigate them.

105. In May 2018, an underground fire incident was reported at the Landfill. An investigation estimated that a fire was burning 20-25 feet below the surface, and firefighters worked overnight to locate it. The incident likely resulted from a damaged and leaking pump. **Exhibit 58** (Correspondence from M. Martin to S. Martin (Apr. 9, 2021)).

106. Bristol, VA, however, failed to provide information regarding this incident to EPA when it requested a variance from the EPA to operate hot wells in the Summer of 2021. As such, the variance granted by EPA may be based on misrepresented data. Indeed, in its approval letter, EPA warned that “[i]t is important for Bristol Landfill and their contractors to ensure that air intrusion into the SSR [subsurface reaction] areas is tightly controlled to prevent a fire. A landfill fire would be a poor outcome at this type of facility and is extremely difficult to control.” *See Exhibit 59* (Letter from K. Melvin, p. 3 (Aug. 23, 2021)).

107. In September 2021, DEQ recommended that information regarding this incident be shared with EPA. **Exhibit 60** (Correspondence from S. Bowers to S. Hess (Sept. 30, 2021)).

108. In addition, so-called “chimneys” have been identified at the Landfill, which may also be related to subsurface reactions. Chimneys are areas where landfill gas is escaping instead of being captured by the LGCCS. Bristol, VA recognized that “we do have an area we call the southeast chimney where large amounts of gas are escaping. I think that is where most of the odor is coming from.” D. McGee, Herald Courier, *Bristol, Va., Landfill Again Cited by DEQ for Inaccurate Info that Slowed Response* (Oct. 8, 2021).

109. At least two chimneys have developed: the Southern and Western. **Exhibit 61** (January 15, 2022 status report).

110. In January 2022, Bristol, VA’s own consultant stated that the Western chimney became significantly noticeable during the summer of 2021, and that the landfill gas from the chimney produces “significant odors and potential health and safety concerns.” **Exhibit 62** (DAA, Western Chimney Landfill Gas Pilot Mitigation Program (Jan 31. 2022)). Landfill gas sampling results indicated certain odorous sulfur compounds and high benzene concentrations. *Id.* What is more, Bristol, VA’s consultant identified “several other chimneys located elsewhere along the quarry walls.” *Id.*

111. Discussions regarding the need to close the chimneys started earlier, at least in May or June 2021. *See Ex. 57* (Email titled Chimneys at the Landfill (Feb. 9, 2022)). In September 2021, Bristol, VA recognized that the chimneys should be closed and that failure to close the chimneys “has gone on way too long.” **Exhibit 63** (Email from Eads (Sept. 26, 2021). In December 2021, Bristol, VA planned to close off the chimneys, but it has failed to do so. In February 2022, Eads summed it up: that recommendations to close the chimneys were not taken “seriously.” *See Ex. 57* (Email titled Chimneys at the Landfill (Feb. 9, 2022)).

B. Failure to Identify and Address Benzene Release.

112. Bristol, VA failed to timely identify that leachate at the Landfill is contaminated with Benzene. Benzene is a common VOC, is listed as hazardous waste under RCRA, and is known to cause cancer.

113. The contaminated leachate is discharged into the BVUA wastewater collection system (and eventually to the wastewater treatment plant located in Bristol, Tennessee), which led BVUA to issue numerous NOV's and a consent order. *See Exhibit 64.* (Press Release, *BVUA Announces Compliance Order on Landfill Benzene* (Dec. 3, 2021)).

114. Benzene concentrations in air samples are highest near the “hot wells”, “chimney,” and “leachate tank,” areas where the strongest malodors have been identified. This finding suggests that the LGCCS and leachate system are compromised in those areas allowing Benzene-contaminated air to emit into the environment. This also suggests that a dangerous subsurface reaction is occurring at the Landfill.

115. Upon information and belief, Bristol, VA was aware of a Benzene problem at the Landfill as early as 2018, well before the odors intensified. Bristol, VA knew about the problem when BVUA “first reported high benzene detection to the City through multiple Notices of Violation (NOV's) reports.” *See Ex. 64.* But Bristol, VA failed to further investigate the Benzene issue which continues up to this day.

116. The Expert Panel noted that elevated benzene concentrations began in 2016, and stated that “benzene is likely being derived from the waste mass, indicating an internal source.” *See Ex. 3*, p. 8 (Expert Report).

C. Elevated Air Emissions.

117. Investigations conducted at the Landfill, including those conducted by EPA and reviewed by the Expert Panel, identified elevated concentrations of Benzene in the air at the Landfill and in the surrounding areas.

118. In June and July 2021, EPA, in coordination with DEQ, conducted a six-week period of continuous air monitoring and collection of air samples at the areas surrounding the Landfill. **Exhibit 65** (EPA Final Air Monitoring Report (Oct. 4, 2021)). The purpose of EPA's sampling was to determine if hazardous substances were present in the air near the Landfill. Air monitoring locations were determined based on the evaluation of odor complaints. The sampling identified the presence of hydrogen sulfide, a component of landfill gas that smells of rotten eggs, and VOCs with relatively high spikes throughout the day. The presence of petroleum-related constituents, including Benzene, Toluene, Xylenes, and Ethylbenzene, was detected in almost all samples. The samples also showed the presence of refrigerant gases, including Chloromethane, dichlorodifluoromethane (a.k.a., Freon 12), and Freon 11 (a.k.a., trichlorofluoromethane), and a number of other compounds, including Acrolein. *Id.*, pp. 11-12. EPA forwarded the analytical results to ATSDR for further evaluation, which remains pending.

119. In October 2021, EPA explained that “the odors [from the Landfill] may have increased in intensity and/or duration” and “[a]s a result, EPA agreed to conduct additional monitoring in the area.” **Exhibit 66** (EPA Conducts Additional Air Monitoring In Bristol Area (Oct. 2021)). This second sampling effort occurred from October 19-28, 2021. The purpose of the sampling was the same – to investigate areas where odor complaints had been received to determine if hazardous substances were present. The sampling identified petroleum-related constituents, including Benzene, Toluene, Xylenes, Ethylbenzene, Heptane, and Hexane, in almost all samples; refrigerant gases, including Chloromethane, Dichlorodifluoromethane (also known

as, Freon 12), 1,1,2-trichlorotrifluoroethane, and Freon 11; and other compounds, including Acrolein. EPA also forwarded the analytical results to ATSDR for further evaluation, which is also still pending. **Exhibit 67** (EPA Final Air Monitoring Report (Dec. 13, 2021)).

120. Sampling conducted by Bristol, TN on the Landfill property identified airborne concentrations of Benzene skewing higher than those typically found in ambient air. *See Exhibit 68*, p. 5 (Dr. Green Report). Measurements in Bristol, TN (off site of the Landfill) show ambient air concentrations that are about 15 times higher the current long-term average “normal” background levels. *Id.* Although Benzene concentrations in ambient air in cities are typically due to other sources, such as engine exhaust and various combustion processes, the available data suggests that Benzene emissions from the Landfill likely dominate and account for most of the substantially elevated concentrations relative to ambient air over otherwise similar cities in the U.S. *Id.*, p. 14.

D. Noxious Odors.

121. Since the fall of 2020, employees and recipients of services provided by Bristol, TN have been complaining about noxious odors coming from the Landfill. They describe the odors as putrid and noxious, including odors of chemicals and gas. They complain of nose bleeds, headaches, migraines, nausea, eye and respiratory irritation and distress, asthmatic attacks, fatigue, anemia, and many other conditions as a result of smelling the odors from the Landfill. Bristol, TN’s experts have confirmed that Landfill malodors are capable of causing health effects that the Bristol, TN employees and residents have been complaining of – headaches, vomiting, nausea, nose bleeds, raspy throat, and others.

122. Odor complaints have been reported by Bristol, TN; the Tennessee Department of Environment and Conservation (“TDEC”); Landfill’s website¹⁰; DEQ; and “Smell my City” mobile application. Some complainants have also organized an active Facebook group page to compare and share their experiences with the odorous Landfill, “Bristol City-VA/TN Air Pollution Community Page.”¹¹ Others have also reported their complaints and shared their frustration and experiences with the Landfill at other community sites like “Dump the Dump”.¹²

V. DEQ’s Expert Panel Has Recommended Actions to Mitigate the Noxious Odors and Bring the Landfill into Compliance with its Permits, but Bristol, VA Has Taken No Action to Implement the Recommendations.

123. Confronted with Bristol, VA’s continued violations relating to its operation and maintenance of the Landfill, as well as the growing public outcry regarding the emergency caused by the Landfill, the DEQ convened an expert panel on March 1, 2022, to address the situation.

124. The panel consisted of 10 experts, including consultants who had been retained by Bristol, VA. Other consultants retained by Bristol, VA provided information to the expert panel. The panel met in Bristol, VA on March 20-22, 2022 “for the express purpose of reaching a consensus on what the City of Bristol should do to alleviate Landfill odor emissions that are negatively affecting neighboring communities in Virginia and Tennessee.” *See Ex. 3*, p. 1 (Expert Report). The expert panel visited the Landfill on March 21, 2022.

125. The expert panel examined three issues: (a) mitigation of odors emanating from the Landfill; (b) the feasibility of continued waste disposal operations at the Landfill; and (c) options for early closure of the Landfill. Expert Report, Executive Summary. The panel’s work and recommendations are set forth in their Expert Report.

¹⁰ <https://www.bristolva.org/FormCenter/City-Help-Desk-7/Solid-Waste-Facility-Concerns-68>

¹¹ <https://www.facebook.com/groups/904106530399037>

¹² While this web page is no longer working, it used to be located at <https://www.dumpthedump.org/>

126. As explained in the Expert Report, “the Landfill is exhibiting early signs of an Elevated Temperature Landfill (ETLF), which is linked to the production and release of odors.” Expert Report at iii. The panel determined that the odors are likely being released from the Landfill’s sidewalls between the Landfill’s rock quarry walls and the sidewall liner system. These release points are referred to as “chimneys”. *Id.*, pp. 4-5. “The Panel agreed [that] engineered remedial action can significantly reduce the release of odors around the Landfill perimeter.” *Id.*, p. 5. The odors also are likely coming from the surface of the Landfill “due to inadequate interim soil cover material.” *Id.*, p. 7.

127. The Expert Report provides ten specific engineered actions intended, *inter alia*, to minimize the release of odors. *Id.*, p. 10.

128. While all of the panel’s recommendations are important to mitigating the noxious odors, the Expert Report identifies two recommendations as “priorities” for Bristol, VA to implement:

- Testing and constructing a sidewall odor mitigation system around the Landfill perimeter that will be designed and constructed to mitigate landfill gases emanating from the Landfill/quarry sidewalls; and
- Installing and monitoring a dedicated system of thermocouples in the waste mass to monitor Landfill temperatures for greater spatial resolution (horizontal and vertical) and to provide data at a greater frequency. (*Id.*)

129. Notwithstanding the Expert Report’s identification of these recommendations as priorities and “the urgent need to implement Panel recommendations” (*Id.*, p. 2), Bristol, VA has done virtually nothing to implement either recommendation. On May 6, 2022, DEQ formally asked Bristol, VA to develop a Plan of Action to implement the Expert Report. **Exhibit 69.** Despite the urgency of the matter, Bristol, VA’s response on May 18, 2022 was just two sentences: “Please be advised the City is in receipt of the Plan of Action Request dated May 6, 2022. The City is confirming that the City plans to address the Panel’s recommendations outlined in the report

and have a plan submitted to DEQ on or before July 6, 2022.” **Exhibit 70** (Email from Eads to J. Hurst (May 18, 2022)). On information and belief, Bristol, VA has not taken any action to date to address the immediate action items identified in the Expert Report. Moreover, it is unclear whether Bristol, VA’s statement that it will “address” the Panel’s recommendations means that Bristol, VA accepts and will implement those recommendations. Given Bristol, VA’s track record, it is unlikely that implementation will be timely and adequately completed.

130. According to its most recent budget, Bristol, VA has over \$20 million in funds available to implement the Expert Panel’s recommendations and address the emergency created by the Landfill.¹³ Thus, Bristol, VA has the funds to implement at least the immediate action items identified by the Expert Panel.

131. As a result of Bristol, VA’s failure, if not refusal, to take action to implement these recommendations, Bristol, TN and its citizens continue to suffer harm caused by the noxious odors coming from the Landfill as described herein, which, as the Expert Report observes, are getting worse.

132. Bristol, VA should be required to implement the recommendations set forth in the Expert Report immediately, including the recommendations identified as priorities.

133. The Expert Report also makes recommendations regarding the continued operation and closure of the Landfill. *See Ex. 3*, pp. 13-15 (Expert Report).

134. The panel concluded that continuing Landfill operations while implementing the recommendations for mitigating odors would be “problematic”, and Bristol, VA “should strongly

¹³ *See* <https://www.bristolva.org/DocumentCenter/View/3597/Administration-Recommended-Budget-for-2022-2023>, p. 123 (last visited May 26, 2022) (identifying an “unassigned” \$22,237,707 in the General Fund).

consider a cessation of waste disposal operations at the Landfill due to incompatibility of operations with the necessary odor mitigation and ETLF remedial strategy.” *Id.*, p. 13.

135. Based on the Expert Report, Bristol, VA should be required to stop operations at the Landfill immediately as part of its implementation of the recommendations for mitigating the odors coming from the Landfill.

VI. Bristol, VA’s Failure to Maintain and Operate the Landfill Adequately Has Created a Public Nuisance and Harmed Bristol, TN.

136. Bristol, VA’s negligent maintenance and operation of the Landfill, which has manifested in multiple repeated and continuing violations of the air and waste permits and other legal requirements, has created a continuing public nuisance that harms Bristol, TN’s ability to perform the duties owed to residents and employees. Bristol, VA’s failure to investigate and correct the issues at the Landfill also poses or may pose an imminent and substantial endangerment to health and/or the environment of Bristol, TN.

137. Bristol, VA’s negligent operation and maintenance of the Landfill, including its violations of its air and waste permits described above, is adversely impacting Bristol, TN’s ability to provide emergency services. For example, staff and firefighters at Bristol Fire Department Station 2 and Bristol Central Fire Station, two fire stations close to the Landfill, have complained of nauseating odors coming from the Landfill, which have caused symptoms such as nosebleeds, bloody sinuses, headaches, and nausea. Some firefighters asked to be transferred to other fire stations so they do not have to constantly smell the odors from the Landfill. *See Exhibit 71*, Declaration of Mike Carrier (“Carrier Dec.”), ¶¶ 11-12; *Exhibit 72*, Declaration of Bill Sorah (“Sorah Dec.”), ¶ 7.

138. Bristol, VA’s negligent operation and maintenance of the Landfill, including its violations of its air and waste permits described above, is adversely impacting Bristol, TN’s ability

to provide educational services. Teachers and students at the Tennessee Middle School, Fairmount Elementary School, Bristol Tennessee High School, and Holston View Elementary School, which are located closest to the Landfill, complain of the noxious Landfill odors, and some of them have experienced frequent nosebleeds, headaches, and vomiting. The odors from the Landfill are impacting the students and teachers. *See Exhibit 73*, Declaration of Dr. Annette Tudor (“Tudor Dec.”), ¶ 5; *Exhibit 74*, Declaration of Ed DePew (“DePew Dec.”), ¶¶ 3-4; Sorah Dec., ¶¶ 5, 7.

139. Bristol, VA’s negligent operation and maintenance of the Landfill, including its violations of its air and waste permits described above, is adversely impacting Bristol, TN’s ability to provide its services to its citizens. For example, employees and seniors using the Slater Community Center, located approximately 1.4 miles from the Landfill, are reporting headaches, vomiting, and nose bleeds due to the odors from the Landfill. Some days the odors from the Landfill make it difficult to conduct classes at the Slater Community Center. *See Exhibit 75*, Declaration of Terry Napier (“Napier Dec.”), ¶¶ 4-5, 7-8; Sorah Dec., ¶¶ 5,7,9.

140. Bristol, VA’s negligent operation and maintenance of the Landfill, including its violations of its air and waste permits described above, is adversely impacting Bristol, TN’s campaign to attract individuals to live in Bristol, TN. That campaign, commenced in around 2020, is premised on the fact that Bristol, TN is a small city surrounded by numerous recreational opportunities and might be an attractive place to relocate, particularly for those working remotely. Bristol, TN is now being perceived as a “smelly city” due to the odors coming from the Landfill as a result of Bristol, VA’s conduct, which undercuts Bristol, TN’s ability to attract and retain residents and businesses. Sorah Dec., ¶ 15.

141. Bristol, VA’s negligent operation and maintenance of the Landfill, including its violations of its air and waste permits described above, is adversely impacting Bristol, TN’s

development opportunities. For example, a local real estate developer stated that the Landfill odors would have to be resolved before they would consider developing certain property in Bristol, TN.

Sorah Dec., ¶ 13.

142. Bristol, TN made the following expenditures to mitigate the odors from the Landfill:

- Air purifiers for fire stations at cost of approximately \$1,100. Filter replacements for the units will amount to \$180 every six months.
- Air purifiers for Slater Community Center at cost of approximately \$3,185.
- Air purifiers for school system at cost of approximately \$6,000. Filter replacements for the units will amount to \$1,800 every six months.
- Air testing in schools at cost of over \$5,100.
- \$30,000 for air purifier assistance program.

See Carrier Dec., ¶ 16; Napier Dec., ¶¶ 11-13; Tudor Dec., ¶ 7; DePew Dec., ¶ 9; Sorah Dec., ¶ 11.

143. Bristol, TN employees spend additional time to address the Landfill issues. For example, over the last eighteen months the City Manager has been dedicating time during his workday to receiving and responding to complaints, meetings with the City Council to address the Landfill, and preparing responses to community members regarding the Landfill situation. Sorah Dec., ¶ 6. School maintenance and operations staff are also spending additional time to address the Landfill odors, including developing new procedures and training other staff. DePew Dec., ¶¶ 6-7.

144. Bristol, TN has taken other actions to address the odors, such as engaging consultants to evaluate the potential health impacts of the Landfill emissions on its residents and options for resolving the issues at the Landfill. Sorah Dec., ¶ 12.

145. Bristol, VA's actions have failed to abate its repeated and continuing violations of CAA and RCRA, and the public nuisance it has created. Despite issuing multiple NOV's, DEQ has failed to initiate an enforcement action capable of abating the violations and public nuisance.

**COUNT I
(VIOLATIONS OF CLEAN AIR ACT, 42 U.S.C. § 7604(A)(1)&(3))**

146. The allegations in the preceding paragraphs are incorporated by reference as if restated fully herein.

147. The citizen suit provisions of the CAA, Section 7604, state that "any person may commence a civil action on his own behalf—

(1) against any person ... who is alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of [] an emission standard or limitation under this chapter," or

(3) against any person who proposes to construct or constructs any new or modified major emitting facility without a permit required under part C of subchapter I (relating to significant deterioration of air quality) or part D of subchapter I (relating to nonattainment) or who is alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of any condition of such permit." 42 U.S.C. § 7604(a)(1) & (3).

148. Any standard, limitation, schedule, permit term or condition in a Title V Permit or NSR Permit is an "emission standard or limitation" that is enforceable through a citizen suit under the CAA. 42 U.S.C. § 7604(f)(4).

149. The Title V and NSR Permits for the Landfill were issued under the authority of CAA and constitute an "emission standard or limitation."

150. Bristol, VA is the owner and operator of the Landfill, and the permittee for the Title V and NSR Permits. The permitting and operation of the Landfill are subject to emission standards or limitations under CAA.

A. Violations of Gas Well Head Temperature Limit.

151. Title V and NSR Permit Conditions No. 7 and 12, respectively, require that the Landfill shall be constructed and operated in compliance with the requirements of 40 C.F.R. 60 Subpart WWW and 40 C.F.R. 63 Subpart AAAA.

152. Title V and NSR Permit Conditions No. 2e and 40 C.F.R. § 60.753(c) & (g), which is among 40 C.F.R. 60 Subpart WWW, require the Landfill to operate each interior wellhead in the LGCCS having a landfill gas temperature less than 55°C (131°F). If the Landfill gas temperature exceeds 55°C (131°F),¹⁴ the Landfill is required to take corrective actions prescribed in 40 C.F.R. § 60.755.

153. 40 C.F.R. § 60.755(a)(5), which is among 40 C.F.R. 60 Subpart WWW, requires that if an exceedance in temperature is identified through monitoring, the Landfill is required to correct the exceedance within 5 calendar days. If correction of the exceedance cannot be achieved within 15 calendar days of the first measurement, the LGCCS shall be expanded to correct the exceedance within 120 days of the initial exceedance. 40 C.F.R. § 60.755(a)(5).

154. In July, August, October, and November of 2020, temperatures in Landfill gas wells Nos. 46 and 47 were recorded as exceeding 55°C (131°F) on five occasions. In many instances, the exceedances lasted for multiple days. In July 2020, the temperature in Landfill gas well No. 47 was 142°F and was reported as exceeding the required temperature limit for 22 days. In October 2020, the temperature in Landfill gas well No. 47 was 136°F and was reported as exceeding the required temperature limit for 27 days. *See* Bristol, VA submission to DEQ (July 8, 2021). These wells have been labeled as “hot wells.” On August 20, 2021, DEQ issued Bristol, VA the Second

¹⁴ On September 27, 2021, operational standards for the wellhead temperature operating standard changed from 131°F (55°C) to 145°F (62.8°C) for operation of each interior wellhead in the collection system. 40 C.F.R. §§ 63.1930, 63.1958.

CAA NOV identifying the temperature exceedances and seeking compliance with Title V and NSR Permits and applicable regulations.

155. Additional exceedances were recorded in April and June of 2021. *See* Bristol, VA Semiannual Report Submission to DEQ (August 27, 2021). Temperatures in Landfill gas wells No. 40, 46, and 47 exceeded 55°C (131°F) on seven occasions for longer than 15 days. Additional exceedances were also recorded in Landfill gas wells Nos. 35 and 39. *See Ex. 59* (EPA August 23, 2021 approval letter). On September 22, 2021, DEQ issued Bristol, VA the Third CAA NOV identifying the temperature exceedances and seeking compliance with Title V and NSR Permits and applicable regulations.

156. Still, Bristol, VA failed to comply with the cited permit requirements since exceedances continued even after the two DEQ NOVs. Records submitted by Bristol, VA to DEQ in October 2021 identified exceedances in temperatures in Landfill gas wells No. 30R and 42, which exceeded 55°C (131°F) in August and September, 2021. These exceedances were greater than 15 days. On December 10, 2021, DEQ issued the City the Fourth CAA NOV for these violations.

157. Exceedances in temperatures in Landfill gas wells 31 R, 37, 64, 67 took place from September 28, 2021 through March 2022. On May 3, 2022, DEQ issued Bristol, VA the Fifth CAA NOV.

158. Upon information and belief, Bristol, VA failed to correct the temperature exceedances on each of the identified occasion within 15 calendar days, as required in 40 C.F.R. § 60.755(a)(5), and failed to expand the LGCCS, also as required in 40 C.F.R. § 60.755(a)(5). Bristol, VA has not taken any action to assess the cause of the higher temperatures or to prevent additional temperature violations from occurring at these or other wells. The May 13, 2022 Status

Report submitted by Bristol, VA to DEQ indicates that multiple wells continue to have temperature exceedances. **Ex. 15** (May 13, 2022 Status Report).

159. As a result, Bristol, VA committed repeated violations of the above-cited Title V and NSR Permit conditions and applicable federal regulations, 40 C.F.R. §§ 60.753(c), (g) and § 60.755(a)(5), and will continue doing so without this Court's intervention.

B. Violations of Gas Well Head Daily Temperature Readings.

160. EPA's August 23, 2021 letter, Ex. 59, approving higher operating temperatures for hot wells requires that Bristol, VA, on a bi-weekly basis (twice monthly, with the first submission due on September 1, and following submissions due on the 1st and 15th of each month), submit a status report to EPA and DEQ detailing daily temperature readings for each existing well, and once installed, daily temperature readings for each of the new wells that are added.

161. Upon information and belief, Bristol, VA failed to conduct daily temperature readings for at least the following gas wells and submit the results to EPA and DEQ throughout September 2021 – February 2022: 31R, 35, 39, 37, 40, 42, 46, 47, 49, 52, 54, 57, 60, 61, 64, 65, and 67. *See* March 1, 2022 Status Report. In this submission Bristol, VA acknowledged that despite the EPA's mandate, Bristol, VA started monitoring gas well 37 on October 21, and gas wells 37 and 35 on November 19, 2021. Thus Bristol, VA violated the conditions of EPA's approval. Upon information and belief, the violations are repeated and additional violations of this requirement are imminent.

C. Violations of the Requirement to Conduct Enhanced Monitoring.

162. Title V Permit Condition No. 2 requires compliance with provisions of 40 C.F.R. §§ 63.1958 and 63.1961.

163. 40 C.F.R. § 63.1958 requires that beginning no later than September 27, 2021, the Landfill operate each interior wellhead in the collection system with a landfill gas temperature less

than 145°F. 40 C.F.R. § 63.1961(a)(5) requires that within 7 calendar days after the first measurement of landfill gas temperature greater than 145°F, enhanced monitoring must be initiated and conducted on a weekly basis.

164. From September 27, 2021 through December 31, 2021 and January 1, 2022 to April 6, 2022, Bristol, VA failed to conduct enhanced wellhead monitoring for landfill gas wells No. 64 and No. 31R. On May 3, 2022, DEQ issued the Fifth CAA NOV to Bristol, VA. As a result, Bristol, VA committed repeated violations of the above-cited requirement.

D. Violations of the Requirement to Correct Temperature Exceedances.

165. Title V Permit Condition No. 2 requires compliance with provisions of 40 C.F.R. § 63.1960.

166. 40 C.F.R. § 63.1960 requires that if a landfill gas temperature less than or equal to 145°F cannot be achieved within 15 days of the first measurement of landfill gas temperature greater than 145°F, the Landfill must conduct a root cause analysis and correct the exceedance as soon as practicable, but no later than 60 days after a landfill gas temperature greater than 145°F was first measured.

167. For the temperature exceedance for well No. 64 on November 18, 2021, the corrective action was not completed within 60 days. For the temperature exceedance for well No. 31R on December 23, 2021, the corrective action was not completed within 60 days. On May 3, 2022, DEQ issued the Fifth CAA NOV to Bristol, VA. As a result, Bristol, VA has repeatedly violated the above-cited requirement.

E. Violations of Surface Methane Concentration Monitoring Requirement.

168. Title V Permit Condition No. 2 requires compliance with provisions of 40 C.F.R. § 63.1960.

169. With respect to methane concentrations, 40 C.F.R. § 63.1960(c)(4) requires that any readings of 500 ppm or more above background at any location must be recorded as a monitored exceedance and the actions specified in paragraphs (c)(4)(i) through (v) of this section must be taken, including the location of each monitored exceedance must be marked and the location and concentration recorded. Beginning no later than September 27, 2021, the location must be recorded using an instrument with an accuracy of at least 4 meters. The coordinates must be in decimal degrees with at least five decimal places. In addition, cover maintenance or adjustments to the vacuum of the adjacent wells to increase gas collection in the vicinity of each exceedance must be made and the location must be re-monitored within 10 days of detecting the exceedance.

170. During the period of November 11 and 12, 2021, 11 instances of meter-recorded methane concentrations at or above 500 ppm level were identified, but Bristol, VA failed to record latitude and longitude coordinates and thus no follow-up 10-day and 1-month readings were conducted. On May 3, 2022, DEQ issued the Fifth CAA NOV to Bristol, VA. As a result, Bristol, VA has repeatedly violated the above-cited requirement.

F. Violations of Gas Well Head Oxygen Concentrations.

171. Title V and NSR Permit Conditions No. 2.e.ii require the Landfill to operate each interior wellhead in the LGCCS having an oxygen content less than 5% as determined by an oxygen meter using EPA Method 3A or 3C. Title V and NSR Permit Conditions 11 and 8, respectively, and 40 C.F.R. § 60.753(c) & (g), which is among 40 C.F.R. 60 Subpart WWW, require the Landfill to take corrective actions as specified in 40 C.F.R. 755(a)(3) through (a)(5) or 40 C.F.R. 60.755(c) if an exceedance of the prescribed oxygen content is identified.

172. 40 C.F.R. § 60.755(a)(5), which is among 40 C.F.R. 60 Subpart WWW, requires that if the exceedance of the prescribed oxygen content is identified, the Landfill is required to correct the exceedance within 5 calendar days. If correction of the exceedance cannot be achieved

within 15 calendar days of the first measurement, the gas collection system shall be expanded to correct the exceedance within 120 days of the initial exceedance.

173. In January through December of 2020, Landfill gas wells Nos. 1, 2, 3, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 18, 23, 24, 25, 29, 35, 26, 39, 40, 41, 42, 46, and 48 experienced at least 211 measured oxygen concentrations in excess of 5% for greater than 5 days. Upon information and belief, Bristol, VA failed to achieve correction of the oxygen concentration exceedances in at least the following gas wells: Nos. 1, 2, 3, 6, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 23, 24, 25, 29, 36, 39, 40, 41, 42 and 48 on at least 141 occasions within 15 calendar days and failed to expand the gas collection system as required in 40 C.F.R. §§ 755(a)(5) and 60.753(c), (g). On August 20, 2021, DEQ issued Bristol, VA the Second CAA NOV for these violations identifying the oxygen exceedances and seeking compliance with Title V and NSR Permits and applicable regulations.

174. Additional exceedances were recorded in January through June 2021, when Landfill gas wells Nos. 1-3, 5-12, 14-18, 23-25, 29, 30, 34-37, 39-42, 46-48 experienced at least 44 measured oxygen concentrations in excess of 5% for greater than 15 days. Upon information and belief, Bristol, VA failed to achieve correction of the exceedances within 15 calendar days and failed to expand the gas collection system as required in 40 C.F.R. §§ 60.755(a)(5) and 60.753(c), (g). On September 22, 2021, DEQ issued Bristol, VA the Third CAA NOV identifying the oxygen exceedances and seeking compliance with Title V and NSR Permits and applicable regulations. The NOV did not propose a penalty.

175. Still, Bristol, VA failed to comply as exceedances continued even after the two CAA NOVs. From July 1, 2021 to September 28, 2021, Landfill gas well Nos. 1, 2, 3, 6, 7, 8, 9, 10, 12, 15, 16, 18, 23, 24, 25, 29R, 30R, 40, 41, 42, 47 and 48R had measured oxygen exceedances

in excess of 5% for more than 15 days. On December 10, 2021, DEQ issued Bristol, VA the Fourth CAA NOV for these violations. The NOV did not propose a penalty.

176. Upon information and belief, Bristol, VA failed to correct the oxygen exceedances on each of the identified occasions within 15 calendar days, as required in 40 C.F.R. § 60.755(a)(5), and failed to expand the gas collection system, also as required in 40 C.F.R. § 60.755(a)(5).¹⁵ As a result, Bristol, VA committed repeated violations of the above-cited Title V and NSR Permit Conditions and applicable federal regulations, 40 C.F.R. §§ 60.755(a)(5) and 60.753(c), (g). Additional violations of this requirement are likely imminent.

G. Violations of Positive Gas Well Head Pressure Requirement.

177. Title V and NSR Permit Conditions No. 2.d require the Landfill to operate each wellhead under negative pressure except as provided in 40 C.F.R. § 60.753(b).

178. Title V and NSR Permit Conditions 11 and 8, respectively, require the Landfill to take corrective actions as specified in 40 C.F.R. § 755(a)(3) through (a)(5) or 40 C.F.R. § 60.755(c) if positive pressure is detected.

179. 40 C.F.R. § 60.755(a)(3), which is among 40 C.F.R. 60 Subpart WWW, requires that the Landfill measure gauge pressure in the gas collection header at each individual well, monthly. If a positive pressure exists, the Landfill is required to initiate an action to correct the exceedance within 5 calendar days. If negative pressure cannot be achieved without excess air infiltration within 15 calendar days of the first measurement, the LGCCS shall be expanded to correct the exceedance within 120 days of the initial measurement of positive pressure.

¹⁵ Upon information and belief, the City has initiated actions to add additional wells, but has not yet fully completed them. The City's actions were not timely implemented, have not been completed, and may not be sufficient to prevent the violations from recurring.

180. In its original report to DEQ dated February 26, 2021 for Year 2020, Bristol, VA indicated there were no well head pressure exceedances during 2020. Bristol, VA's subsequent July 8, 2021 submittal to respond to DEQ's request showed that in January through June 2020, at least 53 occurrences of positive pressure were measured in the following Landfill gas wells: Nos. 30, 33, 35, 36, 37, 39, 40, 41, 46, 47 and 48. *See* Bristol, VA Submission (July 8, 2021). Upon information and belief, Bristol, VA failed to achieve correction of the head pressure limits in at least gas wells Nos. 30, 33, 35, 37, 39, 40, 41, 46, 47 and 48 on at least 36 occasions within 15 calendar days and failed to expand the LGCCS as required in 40 C.F.R. § 60.755(a)(3). On August 20, 21, DEQ issued Bristol, VA the Second CAA NOV identifying the positive pressures and seeking compliance with Title V and NSR Permits and applicable regulations. The NOV did not include a penalty.

181. In January through July 2021, at least 25 occurrences of positive pressure measured in gas wells Nos. 6, 16, 30, 33, 35-39, 47, and 48 took place for greater than 15 calendar days. Upon information and belief, Bristol, VA failed to achieve correction of the positive gas well head pressure within 15 calendar days. On September 22, 2021, DEQ issued Bristol, VA the Third CAA NOV identifying the positive pressures and seeking compliance with the Title V and NSR Permits and applicable regulations. The NOV did not propose a penalty.

182. Still, Bristol, VA failed to comply as positive pressure continued even after the two NOVs. From July 1, 2021 to October 21, 2021, Landfill gas wells Nos. 39, 40, and 47 had measured positive pressures for more than 15 days. On December 10, 2021, DEQ issued Bristol, VA the Fourth CAA NOV for these violations. The NOV did not propose a penalty.

183. Upon information and belief, Bristol, VA failed to correct the instances of positive pressures on each of the identified occasions within 15 calendar days, as required in 40 C.F.R. §

60.755(a)(5), and failed to expand the LGCCS, also as required in 40 C.F.R. § 60.755(a)(5). As a result, Bristol, VA committed repeated violations of the above-cited Title V and NSR Permit Conditions and applicable federal regulations, 40 C.F.R. §§ 60.755(a)(5) and 60.753(c), (g). Additional violations of this requirement are likely imminent.

H. Violations of Gas Collection System Expansion Requirement.

184. Bristol, VA failed to correct the repeated and continuing for over 15 days exceedances in temperature, oxygen, and positive pressure readings identified throughout this Complaint by expanding the LGCCS, which the regulations require Bristol, VA to do within 120 days, in violation of Title V and NSR Permit Conditions and 40 C.F.R. § 60.755(a)(3),(5). On September 22, 2021, DEQ issued the Third CAA NOV for this violation. Upon information and belief, Bristol, VA still has not sufficiently expanded the gas collection system, even though it has installed additional wells. This violation is continuing.

I. Violations of Monthly Visible Emission Observation Requirement.

185. Title V Permit Condition 14.i of Title V Permit effective March 13, 2016¹⁶ requires the Landfill to perform a visible emission observation on the open flare once each calendar month when the unit is operating. The Landfill shall record the details of each visible emissions observation, which shall include, at a minimum, the date and time of the observation, whether there were visible emissions, and any corrective action. Title V Permit Condition No. 14¹⁷ and NSR Permit Condition No. 13.i require the Landfill to maintain records for all emission data and operating parameters including all visible emission readings for the open flare.

¹⁶ That Condition was numbered 13 in the prior version of the permit effective March 13, 2016.

¹⁷ Condition No. 14 of Title V Permit.

186. Bristol, VA repeatedly failed to conduct and document monthly visible emission observations in January, February, March, April, May, July, August, September, October, and December of 2020. On February 22, 2021, DEQ issued Bristol, VA the First CAA NOV identifying these violations.

187. Bristol, VA continued to repeatedly violate this requirement throughout January and February of 2021. On September 22, 2021, DEQ issued Bristol, VA the Third CAA NOV citing this requirement. Additional violations of this requirement are likely imminent.

J. Violations of Well Head Monitoring Requirement.

188. Title V Permit Condition No. 9 and NSR Permit Condition No. 6 require the Landfill to monitor the following parameters of the gas collection system each month: (i) gauge pressure in the collection header at each individual well; (ii) landfill gas temperature in each well; and (iii) nitrogen concentration or oxygen concentration in each well.

189. In January through June 2021, Bristol, VA failed to monitor Landfill gas wells Nos. 1-5, 8-9, 11-15, 23-25, 24, 25, 29, 30, 34, 35, 38, 40, 46, and 47 for temperature, oxygen, or pressure on at least 35 occasions. *See* Bristol, VA Semiannual Report Submission (August 27, 2021). On September 22, 2021, DEQ issued Bristol, VA the Third CAA NOV identifying these violations.

190. Still, Bristol, VA failed to comply as it failed to monitor Landfill gas wells No. 32 in August, September, and October 2021, and Landfill gas well No. 36 in August 2021. On December 10, 2021, DEQ issued Bristol, VA the Fourth CAA NOV for these violations. The NOV did not propose a penalty.

191. Therefore, Bristol, VA committed repeated violations of the above-cited Title V Permit and NSR Permit conditions. Additional violations of this requirement are likely imminent.

K. Violations of the Requirement to Maintain Emission Records.

192. Permit Conditions Nos. 14.n and 14.q of the Title V Permit effective March 13, 2016 require the Landfill to maintain records for all (1) emission data and operating parameters including the occurrence and duration of each startup, shutdown or malfunction of operation; and (2) emission data and operating parameters including all information necessary to demonstrate conformance with the startup, shutdown and malfunction plan (“SSM”) when all actions taken during periods of startup, shutdown and malfunction are consistent with the procedures specified in the SSM. Bristol, VA failed to maintain these records in 2020. On February 22, 2021, DEQ issued Bristol, VA the First CAA NOV. The City committed repeated violations of above-cited Title V Permit Condition. Additional violations of this requirement are likely imminent.

L. Violations of Semi-Annual SSM Reporting Requirement.

193. Permit Condition No. 19 of the Title V Permit effective March 13, 2016 requires the Landfill to submit to DEQ a semi-annual SSM report containing actions taken during startup, shutdown and malfunction that are consistent with procedures of the SSM plan. Upon information and belief, although the Landfill gas utility flare operated for periods of time each month during the first half of 2020, Bristol, VA failed to prepare SSM forms describing these actions. On February 22, 2021, DEQ issued Bristol, VA the First CAA NOV. Bristol, VA committed violations of above-cited Title V Permit Condition. Additional violations of this requirement are likely imminent.

M. Violations of Requirement to Comply.

194. Title V Permit Condition No. 39 requires the Landfill to comply with all terms and conditions of the permit. Under that condition, any permit noncompliance constitutes a violation of CAA or the Virginia Air Pollution Control Law or both. Bristol, VA failed to devote the funding

and resources necessary to ensure the Landfill is operated in a manner to meet the permit requirements, as is evidenced from numerous continuing and repeated violations outlined above.

**SECOND CAUSE OF ACTION
(VIOLATIONS OF RCRA, 42 U.S.C. §6972(A)(1)(B),
IMMINENT AND SUBSTANTIAL ENDANGERMENT)**

195. The allegations in the preceding paragraphs are incorporated by reference as if restated fully herein.

196. As stated above, the citizen suit provision of RCRA allows any person to file a citizen suit against an owner or operator of a solid waste disposal facility if that person has contributed or is contributing to the handling, storage, treatment, transportation, or disposal of solid or hazardous waste and the solid or hazardous waste in question may pose an imminent and substantial endangerment to health or the environment. 42 U.S.C. § 6972 (a)(1)(B).

197. Solid waste is defined as “any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities.” 42 U.S.C. §6903(27).

198. Bristol, VA’s continued acceptance, handling, storage, and disposal of solid waste, which is emitting noxious odors and other harmful emissions, coupled with Bristol, VA’s negligent operation and maintenance of the Landfill evidenced by repeated and continuing violations since at least 2020, present or may present an imminent and substantial endangerment to the health of Bristol, TN employees, residents, visitors, or the environment.

199. These violations include the failure to apply adequate cover at both Landfills Nos. 498 and 588 the failure to adequately manage leachate, the failure to address leachate seeps, the

failure to adequately manage stormwater, and the failure to maintain erosion and sediment controls.

200. Bristol, TN employees, residents, and visitors exposed to noxious odors and other harmful emissions from the Landfill suffer adverse health effects including nose bleeds, headaches, migraines, nausea, eye and respiratory irritation and distress, asthmatic attacks, fatigue, anemia, and many other conditions.

201. These conditions are well known to Bristol, VA, yet the conditions are ongoing, and Bristol, VA has not identified a plan to correct these conditions. The May 3, 2022 Warning Letter issued by DEQ outlines the ongoing failure to comply with requirements to cover solid waste, to minimize the size of the working face, and to have adequate materials present on site to ensure cover is properly and sufficiently applied. That Warning Letter also reflects Bristol, VA's failure to comply with its own Odor Management Plan, which was not put into place until DEQ required it to be developed in 2021.

202. Noxious odors and other harmful emissions, including Benzene, from the Landfill pose or will continue posing an imminent risk of harm to Bristol, TN employees, residents, and visitors if prompt remedial action is not taken.

203. No adequate remediation or corrective action has occurred at the Landfill to date. Bristol, TN continues to be impacted by noxious odors and harmful emissions as a result of Bristol, VA's permit violations and negligent maintenance and operation at the Landfill.

**THIRD CAUSE OF ACTION
(PUBLIC NUISANCE AS A RESULT OF
NEGLIGENT MAINTENANCE AND OPERATION OF THE LANDFILL)**

204. The allegations in the preceding paragraphs are incorporated by reference as if restated fully herein.

205. Bristol, VA's failure to properly maintain and operate the Landfill has caused noxious odors and other harmful emissions to emanate from the Landfill, which are a danger to the public. These dangerous conditions constitute a public nuisance.

206. The DEQ acknowledged that the noxious odors create a public nuisance when it issued its January 11, 2021 Deficiency Letter requiring the Landfill to prepare an odor management plan pursuant to 9VAC20-81-200.D.

207. Bristol, VA, including their officers, agents, servants, and/or employees, created this public nuisance by their negligent, reckless, and/or willful acts relating to their inadequate operation and maintenance of the Landfill.

208. The public nuisance created by the wrongful conduct of Bristol, VA substantially interferes with Bristol, TN's ability to provide basic services to its citizens, including by preventing employees of Bristol, TN from being able to perform their job responsibilities due to the impact of the noxious odors and other harmful emissions from the Landfill. These odors and emissions have caused and will continue causing adverse health effects and discomfort to employees of Bristol, TN.

209. Additionally, Bristol, TN has had to incur additional expenses as a result of the public nuisance created by the Landfill, including the installation and maintenance of air purifiers to mitigate noxious odors and additional time Bristol, TN employees have spent addressing the Landfill issues, loss of revenue, diminution of property values, and others.

210. The public nuisance is not authorized by law.

211. As a direct and proximate result of these breaches of duty by Bristol, VA, Bristol, TN's interests have been and continue to be harmed.

212. Bristol, VA has had a reasonable opportunity to abate the nuisance caused by the noxious odors and other harmful emissions but has failed to do so in a reasonably prompt and effective manner.

WHEREFORE, Plaintiff The City of Bristol, Tennessee requests that this Court enter an Order:

1. declaring that Bristol, VA has violated the CAA and RCRA;
2. declaring that Bristol, VA's negligent operation and maintenance of the Landfill has created a public nuisance;
3. awarding temporary and permanent injunctive relief:
 - a. enjoining Bristol, VA from violating the CAA and RCRA and requiring Bristol, VA to comply with CAA and RCRA immediately, including, but not limited to, implementing the recommendations set forth in the Expert Report;
 - b. requiring Bristol, VA to take all actions necessary to eliminate the public nuisance created by the Landfill, including, but not limited to, implementing the recommendations set forth in the Expert Report;
 - c. requiring that Bristol, VA cease accepting waste for disposal while such actions are implemented;
 - d. requiring Bristol, VA to expeditiously develop a plan for the closure of the Landfill in accordance with the Expert Panel report;
4. awarding Bristol, TN its actual damages in an amount to be proven at trial caused by the public nuisance Bristol, VA has created;
5. awarding Bristol, TN its costs incurred in this litigation, including its reasonable attorneys' and expert witness fees, pursuant to 42 U.S.C. § 7604(d) and 42 U.S. § 6972(e);
6. imposing civil penalties on Bristol, VA in an amount to be determined by the evidence at trial, payable to the United States Treasury, for Bristol, VA's violations of the CAA pursuant to 42 U.S.C. §7604(g); and

7. Any and all other relief that that Court deems just and proper.

May 26, 2022

Respectfully submitted,

/s/ Michael E. Lacy

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Tennessee*

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VERIFICATION

I, Bill Sorah, City Manager of Plaintiff The City of Bristol, Tennessee, first being duly sworn, reviewed the factual information set forth in the Verified Complaint above, and verify, based upon my personal knowledge, the factual information in the Verified Complaint is true and accurate to the best of my knowledge, information, and belief.

Date: 5-25-22

Bill Sorah
Bill Sorah

Subscribed and sworn to before on May 25, 2022.

Velma L. Witte
Notary Public
Notary Identification No. N/A

My commission expires: September 30, 2023

