

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

THE CITY OF BRISTOL, TENNESSEE,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:22CV00023
)	
THE CITY OF BRISTOL, VIRGINIA,)	
)	
Defendant.)	
)	

**CONSENT FINAL ORDER
FOR PERMANENT INJUNCTION AND OTHER RELIEF**

The parties’ joint motion for entry of a consent final order for permanent injunction (the “Consent Order”) (ECF No. ____) is GRANTED. It appearing that the parties, Plaintiff the City of Bristol, Tennessee (“Plaintiff” or “Bristol, TN”) and Defendant the City of Bristol, Virginia (“Defendant”, the “City”, or “Bristol, VA”) (collectively, the “Parties”), have reached a settlement on all matters disputed, and that, as part of the settlement, the parties, through their counsel of record, consent and agree to the entry of this Consent Order.

Therefore, it is ORDERED, ADJUDGED, and DECREED as follows:

FINDINGS

1. The Parties stipulate that this Court has subject matter jurisdiction over this case and over the Parties for purposes of the entry and enforcement of this Consent Order.
2. Venue as to this action and Defendant in the Western District of Virginia is proper under 28 U.S.C. § 1391(b)(1), 42 U.S.C. §§ 7604(c)(1) and 6972(a).
3. On May 26, 2022, Plaintiff filed its Verified Complaint asserting claims for violation of the Clean Air Act, 42 U.S.C. § 7401, *et. seq.* (“CAA”), and the Resource Conservation

and Recovery Act, 42 U.S.C. § 6901, *et seq.* (“RCRA”), and a claim for public nuisance under Virginia law.

4. Defendant was served with a summons and the Verified Complaint on May 31, 2022, stipulated to the entry of the Preliminary Injunction Order (ECF No. 8), and filed an Answer on August 19, 2022.

5. On March 28, 2023, the Circuit Court for the City of Richmond, Virginia (the “Circuit Court”) entered a Consent Decree (the “Consent Decree”) in the case styled, *Commonwealth of Virginia, et al. v. The City of Bristol, Virginia*, Case No. CL23000274-00 (the “State Court Litigation”). Appendix A of the Consent Decree, which is attached as **Exhibit 1** and incorporated herein, requires Bristol, VA, among other things, to remediate the SWP 588 Integrated Solid Waste Management Facility located at 2655 Valley Drive, Bristol, Virginia (“Landfill”), using as a framework the report issued on April 25, 2022, by the Expert Panel convened by the Virginia Department of Environmental Quality (“VDEQ”).

6. The VDEQ, the Virginia Waste Management Board, and the Virginia Air Pollution Control Board are the primary regulators and enforcement authorities for the Virginia Air Pollution Control Law and the Virginia Waste Management Act.

7. This Consent Order supersedes the Preliminary Injunction Order, and accordingly, the Preliminary Injunction Order is hereby DISSOLVED.

ORDER

I.

This Consent Order is binding on Plaintiff and Defendant and their respective successors and assigns. No change in the ownership or legal status of Defendant, including, but not limited

to, any transfer of assets or of real property, shall in any way alter Defendant's responsibilities under this Consent Order.

II.

The Parties agree to this Consent Order to resolve the disputes that have arisen between them and to avoid the burden, expense, and risk of continued litigation. This Consent Order represents the resolution of all claims and allegations that either party may have against the other relating to Bristol, VA's operation and maintenance of the Landfill that exist as of the entry of this Consent Order, including the claims asserted in this case; provided, however, this Consent Order does not resolve claims that may arise after the entry of this Consent Order, including Bristol, TN's right to enforce this Consent Order. This Consent Order resolves all damages, attorney's fees, expert fees, and other costs incurred by either party as of the entry of this Consent Order.

III.

1. Within 30 days after entry of this order, Bristol, VA shall tender to Bristol, TN, the amount of Three Hundred Thousand Dollars (\$300,000) by check made payable to the City of Bristol, Tennessee; and

2. Once all remedial actions required by Section IV of this Consent Order are complete, Bristol, VA shall take all necessary steps to obtain VDEQ approval to close permanently the Landfill in accordance with the applicable Landfill Permit and all applicable laws and regulations; and

3. No additional trash or other waste will be received, placed or disposed of in the Landfill as part of the remedial action, permanent closure, or otherwise; provided however, that portions of the Landfill may be reshaped with existing waste and cover as part of the remediation efforts, including the stormwater remediation plan; and

4. Bristol, TN has the right to inspect the Landfill as necessary for Section IV(2) below. Bristol, TN shall provide Bristol VA at least 72 hours' notice before any inspection, and the Parties shall negotiate in good faith the date and time for an inspection, and such inspection shall not interfere with the remediation work. Bristol, VA shall not unreasonably delay any requested inspection by Bristol, TN.

IV.

Bristol, VA, and its officers, agents, servants, employees, attorneys, and those persons in active concert or in participation with any of them, hereby are ORDERED as follows:

1. The City agrees to establish a temporary air monitoring network to monitor certain constituents of concern (COC) from the landfill. The COC will be Hydrogen Sulfide (H₂S), total reduced sulfur (TRS), and Volatile Organic Compounds (VOCs). Monitors will be installed at the Landfill property line on the side facing Bristol, TN at locations that will be based on recommendations by the City of Bristol, VA's expert considering topographical and climatological factors. At least two such monitors shall be placed at or near the Landfill property line facing Tennessee. The City will monitor on a continuous basis and report average hourly results through construction of the EVOH cover. The results of such air monitoring shall be made publicly available on an ongoing basis and as soon as reasonably possible.

2. Bristol, TN may bring a motion in this Court to enforce the items set forth in Appendix A attached hereto as Exhibit 1 if VDEQ has failed to enforce those provisions within 90 days of a missed deadline, or if there is no deadline, within 90 days of notice from Bristol, TN to Bristol, VA and VDEQ of noncompliance. Nothing in this Consent Order precludes Bristol TN from seeking any other relief allowed under the law in conjunction with a motion to enforce the

deadlines in Exhibit 1. Nothing in this Order precludes Bristol VA from asserting that Bristol TN is not entitled to such relief, or that such relief is not provided for under the law.

3. If the Circuit Court of the City of Richmond approves any amendment of the Consent Decree, the parties shall stipulate to the same amendment of this Consent Order. Where the VDEQ or the Circuit Court amends Bristol, VA's obligations due to Force Majeure (Section VI of the Consent Decree) and/or Appendix A Section 8(v) of the Consent Decree, the parties shall stipulate to the same amendment of this Consent Order.

V.

This Court shall retain jurisdiction of this matter for the purpose of enforcing the terms of this Consent Order. After finding that the parties have met the terms of this Consent Order, this Court shall enter a final order dismissing this matter.

IT IS SO ORDERED.

Date: _____

UNITED STATES DISTRICT JUDGE

Seen and Agreed To:

Andrea W. Wortzel (VSB No. 40342)
Michael E. Lacy (VSB No. 48477)
Viktoriia De Las Casas (VSB No. 89105)
Emily Guillaume (VSB No. 96143)
TROUTMAN PEPPER HAMILTON SANDERS LLP
1001 Haxall Point
Richmond, VA 23219
Telephone: (804) 697-1200
andrea.wortzel@troutman.com
michael.lacy@troutman.com
viktoriia.delascasas@troutman.com
emily.guillaume@troutman.com

E. Lynn Dougherty (VSB No. 20558)
131 8th Street
Bristol, TN 37620
Telephone: (423) 764-1313
Facsimile: (423) 968-2108
dougherty@eldlaw.com

*Counsel for Plaintiff
The City of Bristol, Tennessee*

John D. Adams (VSB No. 65203)
Justin D. Howard (VSB No. 94108)
Erin B. Ashwell (VSB No. 79538)
Christian E. Henneke (VSB No. 45457)
McGuire Woods LLP
Gateway Plaza
800 E Canal Street
Richmond, VA 23219
(804) 775-1000 (telephone)
jadams@mcguirewoods.com
jhoward@mcguirewoods.com
eashwell@mcguirewoods.com
chenneke@mcguirewoods.com

*Counsel for the Defendant
The City of Bristol, Virginia*

EXHIBIT 1

APPENDIX A SCHEDULE OF COMPLIANCE

Bristol shall complete the following actions for the SWP 588 Landfill by the specified dates:

1. GAS COLLECTION – Bristol shall conduct the following actions to improve gas collection, remove heat from the waste, and manage odors at the Landfill:
 - i. Continue to identify and eliminate any landfill gas fugitive emissions at the Landfill surface (e.g., pipe penetrations, inadequate cover, etc.) and continue weekly surface emissions monitoring at the Landfill surface and will conduct monthly monitoring of the leachate collection components, including but not limited to cleanouts, risers, etc. Data from the surface emissions and monthly gas monitoring of leachate collection components must be reported to DEQ and the EPA by Wednesday of the following week in an agreed upon format beginning November 1, 2022.
 - ii. Bristol shall improve the performance of the existing gas extraction system, including minimizing air intrusion pathways through the landfill cover, confirming that dual-phase extraction pumps are operating properly to promote an open well screen, tuning each gas well to prevent over-drawing or under-pulling, and ensuring that all gas collection infrastructure is in proper operating condition. Any gas collection system infrastructure (i.e., gas extraction wells, piping, pumps, etc.) not in proper operating condition shall be returned to proper operating condition or replaced as soon as possible.
 - iii. Implement a remote monitoring system for landfill gas wellhead temperatures. Data collected through the remote monitoring system shall be available to DEQ and EPA on a daily basis. Gas wellhead data shall be available to DEQ and the EPA by November 30, 2022.
 - iv. Install a minimum of 5 large-diameter, dual-phase extraction wells into the waste mass with a suitable casing pipe by June 30, 2023. For the purposes of this Section 1.iv, “suitable” shall mean that the collective performance of the dual-phase extraction wells is equal to or greater than the collective performance of 5 dual-phase wells with 12-inch diameter casing, as recommended in the expert panel’s April 25, 2022 report. Integrate these wells into the landfill gas collection and control system (GCCS). A plan including dual-phase extraction well specifications, details, and locations shall be submitted to DEQ by December 31, 2022. The plan shall be certified and stamped/sealed by a Professional Engineer licensed in the Commonwealth of Virginia (VA-PE) and shall become an enforceable part of this Consent Decree. Upon completion of installation, place extraction wells into operation for removal of gas and leachate and determine appropriate treatment requirements for the extracted leachate.

- v. Prior to installation of the ethyl vinyl alcohol (EVOH) cover system (see Section 6), obtain DEQ concurrence on sufficiency of the wells and install additional wells as necessary.
2. SIDEWALL ODOR MITIGATION – Bristol shall conduct the following actions to the landfill sidewall to manage odors at the Landfill:
- i. Design and install a perimeter gas collection system near the sidewalls by May 1, 2023, with the intent of drawing gas away from sidewall to reduce sidewall emissions. Bristol shall submit the plan to DEQ by December 31, 2022. The plan shall be certified and stamped/sealed by a VA-PE and shall become an enforceable part of this Consent Decree.
 - ii. Bristol shall design a sidewall odor mitigation system and seal around the landfill perimeter that mitigates landfill gases emanating from the landfill sidewalls to the extent practical by November 1, 2022. This system shall integrate into the existing sidewall lining system and the GCCS, while maintaining an intact and compliant lining system. All materials needed to construct the sidewall odor mitigation system will be identified and specified in the design, along with potential sources of materials. The system shall be certified and stamped/sealed by a VA-PE.
 - iii. Bristol shall, by February 10, 2023, construct and initiate a pilot sidewall odor mitigation system along approximately 220 feet of sidewall. The system shall be certified and stamped/sealed by a VA-PE. Bristol shall collect data from the system for 3 months, analyzing data during collection, and making adjustments and alterations to the test pilot system, as needed. Any gas collection elements from this system shall be integrated into the GCCS.
 - iv. Design and construct a sidewall odor mitigation system around the entire Landfill perimeter that will mitigate landfill gases emanating from the landfill/quarry sidewalls. Any gas collection elements from this system shall be integrated into the GCCS. Construction shall be completed by June 14, 2023. The system shall be certified by a VA-PE. Bristol may simultaneously construct the entirety of the sidewall odor mitigation system while the pilot mitigation system is being evaluated.
3. WASTE TEMPERATURE MONITORING – Bristol shall conduct the following actions to monitor temperatures within the waste mass at the Landfill.
- i. Install a dedicated system for temperature monitoring in the waste mass by December 31, 2022 that will provide temperatures at multiple depths throughout the vertical extent of the waste mass (*aka* profile) at multiple locations in the landfill. The intent is to provide spatial monitoring of temperatures throughout the waste mass with sufficient resolution for evaluating the effectiveness of the remedial actions. The temperature monitoring system must be equipped with remote monitoring and integrate into the remote wellhead monitoring system

described in Section 1(iii). Bristol shall provide a plan for the system to DEQ by November 30, 2022. The plan shall be certified and stamped/sealed by a VA-PE. Bristol shall alter the quantity of temperature sensors, including depths, spacing/location, and frequency of data collected as requested by DEQ. Temperature monitoring data shall be available by February 15, 2023.

4. LEACHATE EXTRACTION AND MONITORING – Bristol shall conduct the following actions to extract and analyze leachate from the Landfill above and beyond those actions originally and currently undertaken at the Landfill for leachate collection and management:

- i. Bristol will optimize operation of the leachate extraction pumps within existing dual-phase extraction wells within 90 days of the effective date of this Consent Decree. Monitoring of the leachate extraction pumps, including pump count data, shall be conducted weekly and submitted to DEQ monthly (by the tenth day of the following month).
- ii. Sampling and analysis of leachate from existing and any new dual-phase extraction wells will be conducted on a monthly basis and submitted to DEQ by the tenth day of the following month, beginning December 1, 2022. A plan for sampling and analysis of leachate shall be submitted to DEQ by November 1, 2022. The plan shall be certified and stamped/sealed by a VA-PE and shall become an enforceable part of this Consent Decree.

5. SETTLEMENT MONITORING AND MANAGEMENT – Bristol shall conduct the following actions to monitor and timely address settlement of the Landfill surface:

- i. Develop a settlement monitoring and management plan that provides for means and methods for monitoring surface elevations across the surface of the landfill, prior to, and after placement of the EVOH cover system. This settlement monitoring and management plan will include temporary settlement monuments, used to monitor settlement prior to the EVOH cover, and permanent monuments installed in conjunction with the EVOH cover system. The settlement monitoring and management plan will be prepared in accordance with generally accepted surveying practices and minimum standards within the Commonwealth of Virginia and shall be certified and stamped/sealed by a VA-PE and a surveyor licensed in the Commonwealth of Virginia. Bristol shall submit the settlement monitoring and management plan to DEQ by November 15, 2022. The accepted settlement monitoring and management plan shall become an enforceable part of this Consent Decree.
- ii. Conduct monthly topographic surveys of the settlement monuments to document the magnitude and rates of settlement throughout the waste mass, beginning November 9, 2022 (i.e., thirty days after the installation of intermediate cover). Topographic survey data must be available to DEQ and the EPA by the tenth day of the month following data collection. Upon request, and at the discretion of DEQ, survey frequency may be reduced after the first year.

6. INTERMEDIATE COVER AND EVOH COVER SYSTEM – Bristol shall conduct the following actions to address adequate cover of the Landfill:
 - i. Install intermediate cover in accordance with 9 VAC 20-81-140(B)(1)(d) of the Virginia Solid Waste Management Regulations by October 10, 2022.
 - ii. Design, and submit to DEQ, a plan for an EVOH cover system deployment over the entire SWP 588 Landfill by January 30, 2023. The plan shall be certified and stamped/sealed by a VA-PE and shall become an enforceable part of this Consent Decree.
 - iii. Bristol shall begin the procurement process for the EVOH cover system by January 30, 2023.
 - iv. Install the EVOH cover system within 60 days of completing all other remedial actions, not to exceed 12 months from the effective date of this Consent Decree. Prior to installation of the EVOH cover, shape the existing Landfill surface to direct storm water runoff to a storm water management (SWM) basin located at an appropriate point of the Landfill.

7. STORM WATER MANAGEMENT (SWM) – Bristol shall conduct the following actions to address storm water management for the Landfill:
 - i. Develop, and submit to DEQ for review and concurrence, an effective and sustainable SWM plan, using best engineering practices for both pre- and post-EVOH deployment, by April 30, 2023. The SWM plan shall also address storm water discharged offsite, including monitoring protocols, monitoring parameters, discharge limits, and sampling frequencies. The plan shall be certified and stamped/sealed by a VA-PE and shall become an enforceable part of this Consent Decree.
 - ii. Design and construct a SWM basin at the most appropriate point of the Landfill surface, utilizing best engineering practices, and direct storm water runoff to the basin in accordance with the SWM plan specified above.
 - iii. The SWM plan shall be fully implemented, with all required features and controls constructed and functional, at the appropriate time to coincide with completion of installation of the EVOH cover system.
 - iv. The SWM plan shall adequately address long-term control and removal of storm water from the Landfill until such time that an updated Closure Plan and Post Closure Plan, which addresses permanent SWM, has been approved by DEQ and implemented by Bristol.

- v. Perform monthly monitoring of storm water being discharged offsite from SWP 588 Landfill. Monitoring shall begin when offsite discharge commences. Monitoring frequency shall be monthly during the first year. If monitoring results warrant, as determined by DEQ, monitoring frequency may be reduced to quarterly during the second year and to semi-annually thereafter. Proposed monitoring protocols, parameters, discharge limits, etc. shall be submitted to DEQ for concurrence prior to implementation of monitoring.

8. MISCELLANEOUS

- i. SWP 588 Landfill ceased acceptance of offsite waste prior to September 12, 2022.
- ii. Develop and implement a long-term plan to monitor, maintain, and repair/upgrade the cover systems, leachate and gas collection systems, sidewall odor mitigation systems, and SWM systems. The long-term plan shall be submitted to DEQ by December 31, 2022 and implemented by March 31, 2023. Specific individuals and/or contractors shall be assigned for specific tasks. The plan shall be certified and stamped/sealed by a VA-PE and shall become an enforceable part of this Consent Decree.
- iii. Bristol shall submit monthly progress reports (“Monthly Compliance Reports”) to DEQ beginning in November 2022. The Monthly Compliance Reports shall include comprehensive updates regarding progress towards completion of each item outlined in Appendix A of this Consent Decree. The Monthly Compliance Reports shall be received by DEQ no later than the tenth day of the following month (e.g., the report for reporting period October 1, 2022 through October 31, 2022 shall be due by November 10, 2022). Information to be included in the updates will be agreed upon with DEQ.
- iv. Develop and implement an active community outreach program within 30 days of the effective date of this Consent Decree. The community outreach program shall communicate strategies, provide status updates and progress reports, and receive citizen feedback. The Monthly Compliance Reports shall be made available for public review in an agreed upon format on the City’s website.
- v. Where Bristol is delayed in completing work due to circumstances out of its control, such as supply chain (including shipping) delays, Bristol shall exhaust reasonable means to rectify the delay, to include seeking reasonable alternatives. Where the delay cannot be rectified through available means, Bristol shall promptly notify DEQ and provide proper documentation, which shall include a statement from Bristol’s supplier, contractor, or subcontractor documenting the initial date upon which Bristol made a request for goods and/or services and documenting the delay. Contingent upon evaluation of documentation provided by Bristol and any other available information, and at the reasonable discretion of DEQ, the time for performance may be extended by a reasonable period of time.

Unless otherwise specified in this Consent Decree, Bristol shall submit all requirements of Appendix A of this Consent Decree to:

Jonathan Chapman
Enforcement Specialist
VA DEQ – Southwest Regional Office
355-A Deadmore Street
Abingdon, Virginia 24210
jonathan.chapman@deq.virginia.gov