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December 8, 2021

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND E-MAIL

Mr. Randall Eads
City Manager
City of Bristol, Virginia
300 Lee Street
Bristol, VA 24201

Re: Notice of Intent to Sue for Violations of the Clean Air Act, Resource Conservation and Recovery Act, and Virginia Common Law at Bristol Virginia Integrated Solid Waste Management Facility

Mr. Eads:

The City of Bristol, Tennessee ("Bristol, TN") has grown increasingly concerned – and has been increasingly impacted – by the issues at the Bristol, Virginia landfill. Bristol, TN appreciates the efforts that have been undertaken by the City of Bristol, Virginia ("Bristol, VA") to address these issues, but Bristol, TN is not confident that these efforts are sufficient. Bristol, TN remains hopeful that, through continued action on the part of Bristol, VA and communication regarding these issues, the concerns of Bristol, TN will be resolved. However, given the notice period associated with environmental claims and the concerns regarding adequate and timely action, Bristol, TN has determined that it must take action to protect its interests.

Therefore, on behalf of the City of Bristol, TN we are providing notice of Bristol, TN's intent to file a citizen suit against Bristol, VA based on its ongoing violations of emission standards or limitations and permits under the Clean Air Act ("CAA"), 42 U.S.C. § 7604(a)(1) & (3), for contributing to the past and/or present handling, storage, treatment, transportation, or disposal of solid and/or hazardous waste in a manner that presents an imminent and substantial endangerment to health or the environment under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6972(a)(1)(B), and for violations of Virginia common law at the Bristol Virginia Integrated Solid Waste Management Facility located at 2125 Shakesville Rd, Bristol, VA 24201 ("Landfill") and operated by Bristol, VA. Bristol, TN also notifies Bristol, VA of its intention to sue for ongoing violations of the same type that occur after the violations outlined in this Notice.

The Landfill consists of three permitted landfill units that are authorized to accept municipal solid waste. The first unit associated with Solid Waste Permit No. 221 accepted waste from 1977 until 1986 and is now closed. The second unit associated with Solid Waste Permit No. 498 accepted waste from 1986 until 2002 and, on information and belief, remains open following mining and reclamation activities within that unit. The third unit associated with Solid Waste Permit No. 588 was created through the reclamation of an abandoned quarry and has been accepting waste since 1998.

This notice is provided as required by 42 U.S.C. § 7604(b) and 40 C.F.R. §§ 54.1–54.3; 42 U.S.C. § 6972(b)(2) and 40 C.F.R. §§ 254.1–254.3; and as a courtesy notice of an intent to file suit pursuant to Va. Code § 15.2-209. Upon providing this Notice of Intent to Sue and the expiration of the required waiting period, the CAA and RCRA provisions permit Bristol, TN to commence a citizen suit in federal district court and seek an injunction, imposition of civil penalties, recovery of attorneys' fees and costs of litigation, and obtain other relief as may be appropriate. In support of this Notice of Intent to Sue, upon information and belief, Bristol, TN maintains that Bristol, VA is in violation of these laws as set forth below.

I. Background

Bristol, TN and Bristol, VA have long enjoyed a cooperative relationship, with many shared assets and resources. The Bristol, VA Landfill has been in operation for many decades, and Bristol, TN understands its importance as a source of revenue and as an option for lower cost waste disposal for the citizens of Bristol, VA. However, since the fall of 2020, Bristol, TN has become concerned about the management of the Landfill and the resulting impacts on Bristol, TN. Since that time, with spikes in September-October 2020, January 2021, August-September 2021, and November 2021 there has been a change in the character of the odor emanating from the Landfill, as well as the quantity and extent of that odor. Furthermore, Bristol, TN has become aware of additional regulatory scrutiny relating to the Landfill, including the issuance of four notices of violation (“NOVs”) by the Virginia Department of Environmental Quality (“DEQ”), a receptor study conducted by the U.S. Environmental Protection Agency (“EPA”) and exceedances of the Landfill’s wastewater discharge permit. Bristol, VA has made commitments for improvements, but the deadlines for implementing those improvements have not been met. The four DEQ NOVs remain open without resolution. Bristol, TN does not have any confidence that the violations will not continue. For all of these reasons, Bristol, TN has no choice but to protect its proprietary interests by serving this Notice of Intent to Sue.

II. Violations of Clean Air Act

Section 7604(a)(1) & (3) of the CAA allows any person to file a citizen suit to enforce violations of an emission standard or limitation and permit conditions. Any

standard, limitation, schedule, permit term or condition in a Title V permit and New Source Review Permits is an “emission standard or limitation” that is enforceable through a citizen suit. 42 U.S.C. 7604(f)(4). As relevant, Section 7604 states:

(a) Authority to bring civil action; jurisdiction

Except as provided in subsection (b), any person may commence a civil action on his own behalf—

(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the Eleventh Amendment to the Constitution) who is alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of (A) an emission standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation,

...

(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).

Upon information and belief, Bristol, VA committed the following repeated and continuing violations of CAA for which Bristol, TN seeks to file a citizen suit.

A. Violations of Gas Well Head Temperature Limit

Permit Condition No. 2.e. of the Title V Permit effective March 13, 2016, subsequently renewed and effective on March 13, 2021 (collectively “Title V Permit” or individually “Title V Permit effective March 13, 2016” and “Title V Permit effective March 13, 2021”), and Permit Condition No. 2e of the NSR Permit approved July 7, 2003 (amended November 13, 2003, October 13, 2004 and September 30, 2015) (“NSR Permit”) state in part:

The permittee shall construct and operate a landfill gas (LFG) collection and control system which: e. Is operated with each interior wellhead in the collection system having a landfill gas temperature less than 55 °C...

Title V Permit Condition No. 7 states:

Except where this permit is more restrictive than the applicable requirement, the municipal solid waste landfill shall be constructed and operated in compliance with the requirements of 40 CFR 60 Subpart WWW and 40 CFR 63 Subpart AAAA.

Similarly, NSR Permit Condition No.12 states:

Except where this permit is more restrictive than the applicable requirement, the municipal solid waste landfill as described in the Introduction shall be operated in compliance with the requirements of 40 CFR 60 Subpart WWW.

40 C.F.R. § 60.755(a)(5), which is among Subpart WWW, Standards of Performance for Municipal Solid Waste Landfills, and applicable to the Bristol Landfill as indicated in the above two permit conditions, states in part:

(a) Except as provided in §60.752(b)(2)(i)(B), the specified methods in paragraphs (a)(1) through (a)(6) of this section shall be used to determine whether the gas collection system is in compliance with § 60.752(b)(2)(ii)...(5) For the purpose of identifying whether excess air infiltration into the landfill is occurring, the owner or operator shall monitor each well monthly for temperature and nitrogen or oxygen as provided in §60.753(c). If a well exceeds one of these operating parameters, action shall be initiated 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. Any attempted corrective measure shall not cause exceedances of other operational or performance standards. An alternative timeline for correcting the exceedance may be submitted to the Administrator for approval.

40 C.F.R. § 60.753(c) & (g), also among Subpart WWW, Standards of Performance for Municipal Solid Waste Landfills, and applicable to the Bristol Landfill as indicated in the above two permit conditions, states in part:

Each owner or operator of an MSW landfill with a gas collection and control system used to comply with the provisions of § 60.752(b)(2)(ii) of this subpart shall...(c) Operate each interior wellhead in the collection system with a landfill gas temperature less than 55 °C and with either a nitrogen level less than 20 percent or an oxygen level less than 5 percent...(g) If monitoring demonstrates that the operational requirements in paragraphs (b), (c), or (d) of this section are not met, corrective action shall be taken as specified in § 60.755(a)(3) through (5) or § 60.755(c) of this subpart.

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. For example, in July 2020, the temperature in landfill gas well No. 47 was 142 °F, 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 reported as exceeding the required temperature limit for 27 days.

These temperature exceedances continued into 2021, with exceedances recorded in April and June 2021. In those records, temperatures in landfill gas wells No. 40, 46, and 47 exceeded 55 °C (131 °F) on seven occasions for longer than 15 days.

Upon information and belief, additional exceedances were also recorded in landfill gas wells Nos. 35 and 39. See EPA August 23, 2021 approval letter.

Upon information and belief, Bristol, VA failed to correct the temperature exceedances within 15 calendar days and failed to expand the gas collection system 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. §§ 60.753(c), (g) and § 60.755(a)(5). Instead of meeting these requirements, Bristol, VA sought permission from EPA to operate the wells at higher temperatures. This request was granted on August 3, 2021. However, 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. Additional details regarding these violations can be found in the DEQ NOV's dated August 20, 2021 and September 22, 2021; Bristol, VA submission to DEQ (July 8, 2021); and Bristol, VA Semiannual Report Submission (August 27, 2021).

B. Violations of Gas Well Head Daily Temperature Readings

EPA's August 23, 2021 letter approving higher operating temperature values for certain landfill gas wells states in part:

On a bi-weekly basis (twice monthly, with the first submission being due September 1, following submissions on the 1st and 15th of each month), Bristol Landfill shall submit a status report to both EPA RIII and VADEQ, as above. The report will include daily temperature readings for each existing well, and once installed, daily temperature readings for each of the new wells that are added.

Upon information and belief, Bristol, VA failed to conduct daily temperature readings for each existing well and submit it to EPA as part of its status report, thus violating the conditions of EPA's approval. The violations are continuing and additional violations of this requirement are imminent.

C. Violations of Gas Well Head Oxygen Concentrations

Title V Permit Condition No. 2.e.ii and NSR Permit Condition No. 2.e.ii. state in part:

The permittee shall construct and operate a landfill gas (LFG) collection and control system which: e. Is operated with each interior wellhead in the collection system having a landfill gas temperature less than 55 °C and...: ii. An oxygen content less than 5% as determined by an oxygen meter using EPA Method 3A or 3C (reference 40 CFR 60 Appendix A)...

Condition 11 of the Title V Permit effective March 13, 2016 states in part:

If monitoring demonstrates that the requirements of Condition 2 of this permit are not being met, corrective actions shall be taken as specified in 40 CFR 755(a)(3) through (a)(5) or 40 CFR 60.755(c).

Similarly, NSR Permit Condition No. 8 states in part:

If monitoring demonstrates that the requirements of Condition 2 are not being met, corrective actions shall be taken as specified in 40 CFR 60.755(a)(3) - (a)(5) or 40 CFR 60.755(c).

40 C.F.R. § 60.753(c) & (g), which is among Subpart WWW, Standards of Performance for Municipal Solid Waste Landfills, and applicable to the Bristol Landfill, states in part:

Each owner or operator of an MSW landfill with a gas collection and control system used to comply with the provisions of § 60.752(b)(2)(ii) of this subpart shall...(c) Operate each interior wellhead in the collection system with a landfill gas temperature less than 55 °C and with either a nitrogen level less than 20 percent or an oxygen level less than 5 percent... (g) If monitoring demonstrates that the operational requirements in paragraphs (b), (c), or (d) of this section are not met, corrective action shall be taken as specified in § 60.755(a)(3) through (5) or § 60.755(c) of this subpart.

40 C.F.R. § 60.755(a)(5), which is among Subpart WWW, Standards of Performance for Municipal Solid Waste Landfills, applicable to the Bristol Landfill, states in part:

(a) Except as provided in §60.752(b)(2)(i)(B), the specified methods in paragraphs (a)(1) through (a)(6) of this section shall be used to determine whether the gas collection system is in compliance with § 60.752(b)(2)(ii)...(5) For the purpose of identifying whether excess air infiltration into the landfill is occurring, the owner or operator shall monitor each well monthly for temperature

and nitrogen or oxygen as provided in §60.753(c). If a well exceeds one of these operating parameters, action shall be initiated 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. Any attempted corrective measure shall not cause exceedances of other operational or performance standards. An alternative timeline for correcting the exceedance may be submitted to the Administrator for approval.

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, 9, 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).

In January through June 2021, 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).

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). Upon information and belief, Bristol, VA has initiated actions to add additional wells, but has not yet connected those wells. Bristol, VA's actions were not timely implemented, have not been completed, and may not be sufficient to prevent the violations from recurring. Thus, the violations are continuing, and additional exceedances of the oxygen limits are imminent. Additional details regarding these violations can be found in the above cited Title V permit conditions and the DEQ NOV's dated August 20, 2021 and September 22, 2021; Bristol, VA submission to DEQ (July 8, 2021); and Bristol, VA Semiannual Report Submission (August 27, 2021).

D. Violations of Positive Gas Well Head Pressure Requirement

Title V Permit Condition No. 2.d. and NSR Permit Condition No. 2.d. state in part:

The permittee shall construct and operate a landfill gas (LFG) collection and control system which: d. Is operated with each wellhead under negative pressure except as provided in 40 CFR 60.753(b).

Condition 11 of Title V Permit effective March 13, 2016 states in part:

If monitoring demonstrates that the requirements of Condition 2 of this permit are not being met, corrective actions shall be taken as specified in 40 CFR 755(a)(3) through (a)(5) or 40 CFR 60.755(c)(4).

Similarly, NSR Permit Condition No. 8 states in part:

If monitoring demonstrates that the requirements of Condition 2 are not being met, corrective actions shall be taken as specified in 40 CFR 60.755(a)(3) - (a)(5) or 40 CFR 60.755(c).

40 C.F.R. § 60.755(a)(3), which is among Subpart WWW, Standards of Performance for Municipal Solid Waste Landfills, applicable to the Bristol Landfill as indicated in the above two permit conditions, states in part:

40 CFR 60.755(a)(3) states: "Except as provided in §60.752(b)(2)(i)(B), the specified methods in paragraphs (a)(1) through (a)(6) of this section shall be used to determine whether the gas collection system is in compliance with §60.752(b)(2)(ii) ...For the purpose of demonstrating whether the gas collection system flow rate is sufficient to determine compliance with §60.752(b)(2)(ii)(A)(3), the owner or operator shall measure gauge pressure in the gas collection header at each individual well, monthly. If a positive pressure exists, action shall be initiated to correct the exceedance within 5 calendar days, except for the three conditions allowed under §60.753(b). If negative pressure cannot be achieved without excess air infiltration 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 measurement of positive pressure. Any attempted corrective measure shall not cause exceedances of other operational or performance standards. An alternative timeline for correcting the exceedance may be submitted to the Administrator for approval.

In January through June 2020, at least 53 occurrences of positive pressure measured in the following landfill gas wells: Nos. 30, 33, 35, 36, 37, 39, 40, 41, 46, 47 and 48. 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 gas collection system as required in 40 C.F.R. § 60.755(a)(3).

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. While Bristol has

initiated work to expand the gas collection system, it was not timely implemented and has not been completed as required in 40 C.F.R. § 60.755(a)(3).

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)(3). Upon information and belief, Bristol, VA has indicated that it is working on an expansion of the gas collection system, but that work has not been completed and it is unclear whether the work will be sufficient to address the violations and prevent future violations from occurring. The violations are continuing, and additional violations of this requirement are imminent. Additional details regarding these violations can be found in the DEQ NOVs dated August 20, 2021 and September 22, 2021; Bristol, VA submission to DEQ (July 8, 2021); and Bristol, VA Semiannual Report Submission (August 27, 2021).

E. Violations of Gas Collection System Expansion

Bristol, VA failed to complete expansion of the gas collection system in violation of Title V and NSR Permit Conditions and 40 C.F.R. § 60.755(a)(3),(5) following its inability to correct the temperature, oxygen, and pressure exceedances for over 15 days on numerous occasions identified in Section II. A, C-D of this Notice of Intent to Sue. Upon information and belief, these violations are continuing up to this day.

F. Violations of Monthly Visible Emission Observation Requirement

Permit Condition No. 13 of the Title V Permit effective March 13, 2016 (renumbered as No. 14 in Title V Permit effective on March 13, 2021) requires the permittee to perform a visible emission observation on the open flare once each calendar month when the unit is operating. The permittee 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. In addition, Permit Condition No. 14.i of the Title V Permit effective March 13, 2016 and NSR Permit Condition No. 13.i require the permittee to maintain records for all emission data and operating parameters including all visible emission readings for the open flare.

Upon information and belief, 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 and in January and February of 2021. Therefore, Bristol, VA committed repeated violations of above-cited Title V Permit and NSR Permit Conditions. Additional violations of this requirement are imminent. Additional details regarding these violations can be found in the DEQ NOV dated February 22, 2021.

G. Violations of Well Head Monitoring Requirement

Title V Permit Condition No. 9 and NSR Permit Condition No. 6 state as follows:

“The operation of the gas collection system shall be monitored as follows: (a) The following items shall be monitored each month: (i) Gauge pressure in the collection header at each individual well. (ii) LFG temperature in each well. (iii) Nitrogen concentration or oxygen concentration in each well...”

Upon information and belief, 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. Therefore, Bristol, VA committed repeated violations of above-cited Title V Permit and NSR Permit Conditions. Additional violations of this requirement are imminent. Additional details regarding these violations can be found in the DEQ NOV dated September 22, 2021; and Bristol, VA Semiannual Report Submission (August 27, 2021).

H. Violations of the Requirement to Maintain Emission Records

Permit Conditions Nos. 14.n and 14.q of the Title V Permit effective March 13, 2016 require the permittee 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.

Throughout 2020, Bristol, VA failed to maintain any SSM records even though the landfill gas utility flare was in fact started-up and shutdown when the Ingenco gas to energy facility was off-line or when the gas system was being tuned or maintained that year. Upon information and belief, Bristol, VA committed repeated violations of above-cited Title V Permit Conditions. Additional violations of this requirement are imminent. Additional details regarding these violations can be found in the DEQ NOV dated February 22, 2021.

I. Violations of Semi-Annual SSM Reporting Requirement

Permit Condition No. 19 of the Title V Permit effective March 13, 2016 requires the permittee 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. Upon information and belief, Bristol, VA committed violations of above-cited Title V Permit and applicable federal regulations.

Additional violations of this requirement are imminent. Additional details regarding these violations can be found in the DEQ NOV dated February 22, 2021.

J. Violations of Requirement to Comply

Permit Condition No. 39 of the Title V Permit effective March 13, 2016 requires the permittee to comply with all terms and conditions of this permit. This condition means that a permittee must devote the funding and resources necessary to ensure the landfill is operated in a manner to meet the permit requirements. As is evidenced from the violations outlined herein, Bristol, VA has failed to do so.

III. Violations of RCRA

RCRA's Endangerment Clause, 42 U.S.C. § 6972, 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. As relevant, the provision states:

(a) In general

Except as provided in subsection (b) or (c) of this section, any person may commence a civil action on his own behalf—

(1)

...

(B) against any person, including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution, and including any . . . past or present owner or operator of a treatment, storage, or disposal facility, 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; ...

The Landfill is a solid waste disposal facility as defined by RCRA which started accepting waste in approximately 1977. Since 1998, the Landfill permitted under Permit No. 588 has been accepting, and is continuing to accept, handle, store, and dispose¹ of

¹ RCRA defines "disposal" as used in 42 U.S.C. § 6972(a)(1)(B) as "the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water

solid waste at its property. Since the fall of 2020, odors emanating from the Landfill have increased significantly, as evidenced by a significant number of complaints submitted by residents to DEQ, the Tennessee Department of Environment and Conservation (“TDEC”), and the cities of Bristol, TN and Bristol, VA. Residents have also organized an active Facebook group to compare and share their experiences with the odorous landfill.² In addition, complaints regarding the Landfill have been logged on the “Smell my City” mobile application. Bristol, TN’s residents have been complaining of noxious odors, including chemicals and gas, and many residents have reportedly experienced adverse health effects including nose bleeds, headaches, nausea, and others as a result of these odors.

In January through July 2021, air and leachate sampling was conducted at the Landfill,³ which identified numerous constituents of concern emanating from the Landfill. They include at least the following toxic chemicals: Benzene, Ethylbenzene, Propylene, Chloromethane, Acetone, Carbon Tetrachloride, Ethanol, Trichlorofluoromethane, Dichlorodifluoromethane, n-Hexane, 1,1,2-Trichlorotrifluoroethane, Methylene Chloride, 2-Butanone (MEK), 2-Propanol, Styrene, Toluene, Vinyl Chloride, m&p-Xylene, o-Xylene, Trichloroethene, Tetrahydrofuran, 1,2,4-Trimethylbenzene. See, e.g., Report of Laboratory Analysis, Pace Analytical Services, LLC (January 13, 2021); Bristol, VA’s May 2021 Monthly Report - Odor Management Plan (July 2, 2021).

These fugitive emissions of toxic chemicals identified by the sampling conducted by Bristol, VA, as well as noxious odors emanating from the landfill, are known to cause nose bleeds, headache, migraines, nausea, eye and respiratory irritation and distress, asthmatic attacks, fatigue, anemia, and many other severe conditions. As explained above, many of these conditions are currently experienced by Bristol, TN residents, business owners, and other members of the community.

Information in the DEQ files demonstrates that the Landfill has been operated in a manner that endangers the surrounding community. Old putrescent waste exhumed as part of the mining operation has been inappropriately used as cover material in the Landfill. In addition, the Landfill is understaffed and underfunded, resulting in lapses in required and recommended waste management practices. For example, on May 27, 2021, DEQ issued a Warning Letter to the Landfill, indicating that a pump used to convey gradient control water to the sanitary sewer system was broken. DEQ observed landfill gas odor emanating from the area of the broken pipe. However, the Landfill failed to resolve the issue as directed by DEQ in the Warning Letter. Recent DEQ email

so that such solid or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters.” 42 U.S.C. § 6903(3).

² See Kristen Quon, *Bristol, Virginia Officials Working on Solution for Landfill Problems, Could Face Fines*, WCYS News (Apr. 21, 2021), <https://wcyb.com/news/local/bristol-virginia-officials-working-on-solution-for-landfill-problems-could-face-fines>.

³ The United States Environmental Protection Agency conducted additional sampling in October 2021. A report from the Agency for Toxic Substances and Disease Registry is expected in early 2022.

correspondence and a newspaper article highlighting the City's failure were necessary before the City agreed to set aside the funds to correct the issue. To date, the repair work has not been completed.⁴ On December 7, 2021, DEQ issued a Notice of Violation citing the City's failure to replace the gradient control pump, and noting that neither of the pumps intended to convey leachate and gradient control to the sanitary sewer system were functioning properly.

Bristol, VA's continued acceptance, handling, storage, and disposal of solid waste, coupled with its failure to properly operate and maintain the landfill as evidenced by repeated and continuing violations identified in Section II of this Notice of Intent to Sue since at least 2020 may present an imminent and substantial endangerment to health and the environment and is in violation of RCRA.

IV. Violations of Virginia Common Law

Bristol, TN, as a courtesy, is also notifying Bristol, VA of its intent to assert Virginia common law nuisance and negligence claims against Bristol, VA. As a result of Bristol, VA's failure to address the issues at the Landfill, and based on increased concerns from the citizens and impacts to Bristol, TN, Bristol TN had no choice but to retain counsel to evaluate its options. Bristol, VA was aware of this fact on or before September 30, 2021, as acknowledged in Bristol, VA's October 24, 2021 Landfill Update. Bristol, VA has also previously received numerous complaints from Bristol, TN citizens, as well as Bristol, TN itself. Bristol, VA continues to be negligent in its operation and maintenance of the Landfill, allowing noxious odors to escape from the Landfill. These actions of Bristol, VA have created and are continuing to create a nuisance.

Bristol, VA has had notice of these concerns and complaints. Nonetheless, out of an abundance of caution, Bristol, TN provides notice under Va. Code § 15.2-209 of an intent to assert negligence and nuisance claims against Bristol, VA.

V. Party Giving Notice

As required by 40 C.F.R. §§ 54.3 and 254.3, the person providing this notice is:

City of Bristol Tennessee
801 Anderson Street
Suite 201
P. O. Box 1189
Bristol, Tennessee 37621

⁴ David MacGee, *DEQ Email Calls Landfill Situation "Dire,"* the Herald Courier (Nov. 19, 2021) (noting that the repair work is estimated to take 7-8 weeks).

Bristol, TN is represented in this matter by the following counsel:

Andrea Wortzel
Michael Lacy
Viktoriia De Las Casas
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If you believe any of the factual information or legal requirements stated in this Notice of Intent to Sue are incorrect, please contact us. If the above-identified CAA and RCRA violations are not remediated, Bristol, TN intends to file a citizen suit against Bristol, VA at the expiration of the waiting period. It is Bristol, TN's urgent desire to see these issues addressed by Bristol, VA. Bristol, TN is willing to meet with Bristol, VA and the DEQ to discuss these issues and how they may be resolved to the satisfaction of Bristol, TN's concerns.

Sincerely,



Andrea W. Wortzel

cc: Via certified mail, return receipt requested

Michael S. Regan
EPA Administrator
Environmental Protection Agency
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Washington, DC 20460

Adam Ortiz
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