

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

<b>THE CITY OF BRISTOL,</b>	)	
<b>TENNESSEE,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Civil Action No. 1:22-cv-23</b>
	)	
<b>THE CITY OF BRISTOL, VIRGINIA,</b>	)	
	)	
<b>Defendant.</b>	)	
	)	

**MEMORANDUM OF LAW IN SUPPORT OF MOTION  
FOR A PRELIMINARY INJUNCTION**

Plaintiff the City of Bristol, Tennessee (“Bristol, TN”), by counsel, and pursuant to Fed. R. Civ. P. 65, submits this memorandum in support of its Motion for Preliminary Injunction.

**INTRODUCTION**

As set forth in Bristol, TN’s Verified Complaint (ECF No. 1), Defendant the City of Bristol, Virginia (“Bristol, VA” or the “City”) has repeatedly, and continually, violated the air and solid waste permits relating to the operation and maintenance of its active solid waste landfill (the “Landfill”). Bristol, VA’s failure to comply with its permits also constitutes violations of the Clean Air Act (“CAA”) and the Resource Conservation and Recovery Act (“RCRA”), which authorize Bristol, TN to file this lawsuit to enforce the permit conditions and require Bristol, VA to comply with them. These violations have manifested in serious environmental impacts, including noxious odors coming from the Landfill that affect Bristol, TN, which is located approximately 1,000 feet from the Landfill. The odors are so bad and so prevalent that they impact the ability of some of Bristol, TN’s first responders and teachers to do their jobs because the odors cause nosebleeds, headaches, and vomiting. The noxious odors are a public nuisance of such a

magnitude that DEQ has used emergency funds to establish an expert panel to outline the measures needed to address the situation. On May 24, 2022, Randy Eads (“Eads”), the City Manager and City Attorney for Bristol, VA, referred to the Landfill as a “monumental disaster”.<sup>1</sup>

Despite seven Notices of Violation (“NOVs”) of the permits issued by the Virginia Department of Environmental Quality (“DEQ”) to Bristol, VA since February 2021, Bristol, VA has done virtually nothing to address the situation it has created. This inaction led DEQ to take the unprecedented action of convening an Expert Panel to address the issues at the Landfill and identify steps that need to be taken to correct them. That Expert Panel issued a report on April 25, 2022, confirming the operational concerns at the Landfill and the resulting odor problems and providing consensus recommendations for addressing those issues. *See Exhibit 1.* The Panel outlined immediate actions that should be taken to minimize the ongoing impacts and enable a long-term solution to be developed and implemented.

Even with an Expert Report telling Bristol, VA what to do, Bristol, VA still refuses to take meaningful action to address the violations and contain and eliminate the noxious odors. On May 6, 2022, DEQ formally asked Bristol, VA to develop a Plan of Action to implement the Expert Report. Despite the urgency of the matter, Bristol, VA’s response 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 2.** 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

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<sup>1</sup> 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](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).

Panel's recommendations means that Bristol, VA accepts and will implement those recommendations, and if so, when it will take action. Given Bristol, VA's long track record of failing to take action to correct problems at the Landfill, it is unlikely that anything it does to implement the recommendations of the Expert Panel will be timely or adequate. 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[.]"<sup>2</sup>

Bristol, TN moves for a preliminary injunction requiring Bristol, VA to immediately implement the following "priority" recommendations of the Expert Panel:

1. Install a sidewall odor mitigation system around the Landfill perimeter;
2. Install and monitor a dedicated system of thermocouples in the waste mass to monitor Landfill temperatures;
3. Prohibit Bristol, VA from accepting any more waste at the Landfill;
4. Provide adequate cover of the waste at the Landfill; and
5. Require Bristol, VA to submit a report within sixty days detailing how the other recommendations of the Expert Panel will be accomplished.

As set forth below, it is very likely that Bristol, TN will succeed on the merits of its claims given Bristol, VA's repeated and continuing violations of their air and solid waste permits, and it is undoubtedly in the public interest to require Bristol, VA to take action that will help eliminate the noxious odors coming from the Landfill, which also will require Bristol, VA to come into compliance with its air and waste permits. Moreover, without an injunction, Bristol, TN will

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<sup>2</sup> 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](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).

continue to suffer irreparable harm caused by the Landfill’s noxious odors. For these reasons, the entry of a preliminary injunction is warranted and necessary to mitigate the harmful effects of the public danger created by Bristol, VA’s mismanagement of the Landfill.

## **STATEMENT OF FACTS**

### **I. THE LANDFILL AND ITS SOLID WASTE AND AIR PERMITS.**

#### **A. The CAA and RCRA regulate the operations of the Landfill.**

The Landfill is a solid waste disposal facility located within the corporate limits of Bristol, VA, and is owned and operated by Bristol, VA. The Landfill started accepting solid waste in approximately 1998. The Landfill is one of three landfill areas owned and operated by Bristol, VA located on contiguous parcels of land. (Compl., ¶¶ 24-27.)

The operations at the Landfill are subject to the CAA, which 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). While the Environmental Protection Agency (“EPA”) is responsible for implementing the CAA, EPA can delegate its authority to states. *See* 42 U.S.C. § 7661a(d)(1). In Virginia, DEQ is responsible for implementing air regulations that are adopted by the State Air Pollution Control Board. Va. Code § 10.1-1186. Virginia’s State Air Pollution Control Board, which is staffed by DEQ, issues permits governing air emissions. Va. Code § 10.1-1322. 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 Virginia pursuant to the CAA. *See* 42 U.S.C. § 7604(a)(1) and (3).<sup>3</sup> This Court has the authority “to enforce such an emission standard or limitation.” 42 U.S.C. § 7604(a).

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<sup>3</sup> “‘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

The Landfill operations also are subject to RCRA. “RCRA is a comprehensive environmental statute that governs the treatment, storage, and disposal of solid and hazardous waste.” *Meghrig v. KFC W., Inc.*, 516 U.S. 479, 483 (1996). 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.’” *Id.* at 483 (quoting 42 U.S.C. § 6902(b)). RCRA “is a remedial measure that courts have tended to construe and apply in a liberal, though not unbridled, manner.” *Davis v. Sun Oil Co.*, 148 F.3d 606, 609 (6th Cir. 1998). DEQ and the Virginia Waste Management Board operate the solid waste management program for Virginia 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.*

RCRA authorizes “any person” to file a lawsuit:

(B) 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). “[S]ubsection (a)(1)(B) authorizes so-called ‘imminent and substantial endangerment’ claims to be brought against a defendant whose conduct – whether ongoing or purely in the past – ‘may’ now pose an ‘imminent and substantial endangerment to health or the environment.’” *Goldfarb v. Mayor & City Council of Baltimore*, 791 F.3d 500, 504 (4th Cir. 2015). Subsection (a)(1)(B) 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 Mng.t of New York, L.L.C.*, 405 F. Supp. 3d 408, 434 (W.D.N.Y. 2019). Under the Endangerment Clause

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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).

of RCRA, “[n]egligent oversight of disposal is actionable.” *Cox v. City of Dallas*, 256 F.3d 281, 296 (5th Cir. 2001). The goal of the Endangerment Clause is to ensure that waste disposal is adequately protective of public health. *Simsbury-Avon Pres. Club, Inc. v. Metacon Gun Club, Inc.*, 575 F.3d 199, 210 (2d Cir. 2009) (internal quotation omitted).

“An endangerment is ‘substantial’ where there is reasonable cause for concern that someone or something may be exposed to risk of harm if prompt remedial action is not taken.” *Lewis v. FMC Corp.*, 786 F. Supp. 2d 690, 707 (W.D.N.Y. 2011); *see also NRDC, Inc. v. Cnty. of Dickson*, 2011 U.S. Dist. LEXIS 294, \*15 (M.D.Tenn. 2011) (citing *Burlington N. & Santa Fe Ry. v. Grant*, 505 F.3d 1013, 1020-21 (10th Cir. 2007)). The possibility that harm “may” occur is sufficient to constitute endangerment. *See NRDC, Inc. v. Cnty. of Dickson*, 2011 U.S. Dist. LEXIS 294, \*15-16 (M.D.Tenn. 2011) (citations omitted). The harm need not be immediately imminent—that human health and/or the environment could be endangered in the future is enough, as long as the threat of the harm is presently occurring. *See Meghrig v. KFC W., Inc.*, 516 U.S. 479, 485-86 (1996) (“§ 6972(a) was designed to provide a remedy that ameliorates present or obviates the risk of future ‘imminent’ harms”).

To remedy a subsection (a)(1)(B) violation, “the district court has authority ‘to order [a defendant] to take such other action as may be necessary.’” *Goldfarb*, 791 F.3d at 504 (quoting § 6972(a)).

**B. The Landfill’s solid waste permit.**

The Landfill is the only landfill area at the site that is actively taking solid waste. The Landfill was permitted by DEQ under Solid Waste Permit No. 588 (“SWP 588”) issued on February 15, 1996 (“Landfill No. 588” or “Landfill”). Two other landfill areas are referred herein as “Landfill No. 221” and “Landfill No. 498.” (Compl., ¶¶ 24-27.) SWP 588 requires Bristol, VA 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 3** (Permit Module I, General Permit Conditions, I.B.5).
- apply sufficient daily cover to control odors from the Landfill. *Id.* (Permit Module I, General Permit Conditions, I.F.4).

SWP 588 incorporates requirements of 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.

**C. The Landfill’s air permits.**

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. (Compl., ¶¶ 33-35.) Both the Title V Permit and the NSR Permit were 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 Va. Admin. Code §§ 5-80-50 to 5-80-300. See **Exhibit 4**.

All landfills produce gas, which is a natural byproduct of decomposition of organic material and 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 smells of rotten eggs, and other reduced sulfur compounds. (Compl., ¶ 36.) Pursuant to Condition 2 of the Title V Permit and the 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. Landfills Nos. 221, 498, and 588 are equipped with LGCCS systems. (Compl., ¶ 37.)

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 that does not exceed prescribed limits (55°C (131°F) before September 27, 2021 and 62.8°C (145°F) on or after September 27, 2021). (Permit Conditions 2e; *see also* 40 C.F.R. § 63.1958).
- Bristol, VA is required 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 (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)).

(Compl., ¶¶ 42, 152.) Bristol, VA is required to take corrective action if any of these requirements are not met. *See* 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* Title V Permit Condition 9; NSR Permit Condition 6.

The NSR Permit authorizes Bristol, VA to construct and operate a municipal solid waste landfill and one landfill gas flare. Bristol, VA is required to perform a visible emissions observation on the open flare once each calendar month when it is operating. *See* Title V Permit Condition 14; NSR Permit Condition 10.

## II. BRISTOL, VA'S REPEATED VIOLATIONS OF THE TITLE V AND NSR PERMITS.

In the fall of 2020, DEQ noted an uptick in odor complaints associated with the Landfill. (Compl., ¶ 46.) After visiting the Landfill, DEQ issued a NOV on February 22, 2021 (the “First CAA NOV”) for Bristol, VA’s violations of the Title V and NSR Permits because it failed to perform monthly visible emission observations of the Landfill gas flare, maintain startup, shutdown or malfunction of operation records, and submit the required Startup, Shutdown, and Malfunction (“SSM”) forms to DEQ. *See Exhibit 5.*

DEQ continued investigating the Landfill and uncovered numerous other violations of the air permits. (Compl., ¶ 49.) On August 20, 2021, DEQ issued a second 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<sup>4</sup>) in gas wellheads. *See Exhibit 6.*

On September 22, 2021, DEQ issued Bristol, VA a third 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 7.* 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. *Id.* In addition, DEQ alleged that Bristol, VA failed to conduct visible observations of the flare, the same violation identified in the First CAA NOV. *Id.*

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<sup>4</sup> When there is negative pressure in a well, that means that there is a vacuum that allows the gas to be collected rather than released to the atmosphere; positive pressure means that landfill gas is not being collected effectively.

On December 10, 2021, DEQ issued Bristol, VA a fourth 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 8*. DEQ also alleged that Bristol, VA continued to fail to monitor the wellheads for temperature, oxygen, and pressure. *Id.* All of these violations were also the subject of the DEQ’s Second and Third CAA NOV’s.

On May 3, 2022, DEQ issued a fifth NOV (the “Fifth CAA NOV”), indicating that temperature exceedances continued to take place at the Landfill. *See Exhibit 9*. Indeed, data submitted by Bristol, VA to DEQ on May 13, 2022 identified multiple temperature exceedances from January through April 2022. *See Exhibit 10* (May13, 2022 Status Report).

Although the NOV’s state that Bristol, VA is required to return to compliance, Bristol, VA has not returned to compliance and no consent order or other document has been developed outlining how compliance will be achieved. (Compl., ¶ 54.)

### **III. BRISTOL, VA’S REPEATED VIOLATIONS OF SWP 588.**

On January 11, 2021, DEQ issued Bristol, VA a Deficiency Letter alleging that the Landfill violated two conditions of its SWP 588. 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 11* (DEQ Deficiency Letter (Jan. 11, 2021)).

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 12* (DEQ Warning Letter (May 27, 2021)).

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)<sup>5</sup>, and SWP 588<sup>6</sup> Permit Condition Module I, Section I(B)(5). These provisions 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 13*.

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. (Compl., ¶ 72.) DEQ issued Bristol, VA a second RCRA NOV (the “Second RCRA NOV”) for these cover deficiencies on April 25, 2022. *See Exhibit 14*.

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<sup>5</sup> 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.

<sup>6</sup> 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.

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. (Compl., ¶ 73.) On May 3, 2022, DEQ issued Bristol, VA a Warning Letter, alleging cover deficiencies. **Exhibit 15**, DEQ WL-005-0522-SW (May 3, 2022).

DEQ became concerned with odors from the Landfill in 2019, when it 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. Bristol, VA did not develop such a plan at that time. In December 2020, DEQ again asked Bristol, VA to develop an odor management plan, which Bristol, VA also did not do. (Compl., ¶ 80.)

#### **IV. BRISTOL, VA’S FAILURE TO FOLLOW ITS OWN ODOR MANAGEMENT PLAN.**

On January 11, 2021, DEQ issued Bristol, VA a Deficiency Letter, referring to a significant number of odor complaints (over 30 since mid-November 2020) and again requiring the Landfill to develop an odor management plan. (Compl., ¶ 81.) Virginia regulations require landfills to prepare an odor management plan within 90 days when “an odor nuisance or hazard is created.” 9VAC20-81-200.D. 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. (Compl., ¶ 81.)

Bristol, VA submitted the final Odor Management Plan on June 7, 2021. 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.
- Closing and/or sealing manhole covers and access doors related to the leachate and gradient water collection and conveyance systems.

(Compl., ¶¶ 83-84.) 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 permits. Despite Bristol, VA’s purported commitment to these measures, odor complaints continued. For example, in September 2021, Bristol, VA received 439 complaints, and in November 2021, 2,147 complaints. (Compl., ¶¶ 85-86.)

It is clear that Bristol, VA has not been implementing the Plan and performing the immediate remediation actions. DEQ cited Bristol, VA for failure to implement the Odor Management Plan in the May 3, 2022 Warning Letter. These failures manifest in subsurface reactions and chimneys, which have been identified by investigations and sampling conducted by DEQ, EPA, Bristol, TN, Bristol, VA and the Expert Panel. (Compl., ¶¶ 87, 104, 108.)

Subsurface reactions are likely occurring near the hot wells, which are the subject of numerous CAA NOV<sub>s</sub>. The reactions contribute to the noxious odors coming from the Landfill. (Compl., ¶ 104.) 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. 1**, 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. (Compl., ¶ 104.)

Chimneys—features where landfill gas is escaping instead of being captured by the LGCC—have also been identified at the Landfill and lead to odors. (Compl., ¶ 108.) In January 2022, Bristol, VA’s own consultant stated that the Western chimney became significantly noticeable during the summer of 2021 and confirmed that the landfill gas from the chimney produces “significant odors and potential health and safety concerns.” **Exhibit 16** (DAA, Western Chimney Landfill Gas Pilot Mitigation Program (Jan. 31. 2022)) (explaining that landfill gas sampling results indicated certain odorous sulfur compounds and high benzene concentrations in the gas that is escaping from the chimneys). What is more, Bristol, VA’s consultant identified “several other chimneys located elsewhere along the quarry walls.” *Id.* Discussions regarding the need to close the chimneys started earlier, at least in May or June 2021. 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.” 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: recommendations to close the chimneys were not taken “seriously.” (Compl., ¶ 111.)

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. (Compl., ¶ 121.)

Odor complaints have been reported by Bristol, TN; the Tennessee Department of Environment and Conservation (“TDEC”); Landfill’s website<sup>7</sup>; 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.”<sup>8</sup> Others have also reported their complaints and shared their frustration and experiences with the Landfill at other community sites like “Dump the Dump”.<sup>9</sup> (Compl., ¶ 122.)

## V. THE LANDFILL AND ELEVATED LEVELS OF BENZENE.

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. Benzene is a common VOC, is listed as hazardous waste under RCRA, and is known to cause cancer. (Compl., ¶¶ 112, 117.)

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 17** (EPA Conducts Additional Air Monitoring In Bristol Area (Oct. 2021)). This second sampling<sup>10</sup> effort occurred from October 19 to October 28, 2021. The purpose of the sampling was 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. (Compl.,

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

<sup>8</sup> <https://www.facebook.com/groups/904106530399037>

<sup>9</sup> While this web page is no longer working, it used to be located at <https://www.dumpthedump.org/>

<sup>10</sup> EPA’s first sampling effort took place in June and July 2021. (Compl., ¶118.)

¶ 119.) EPA also forwarded the analytical results to ATSDR for further evaluation. **Exhibit 18** (EPA Final Air Monitoring Report (Dec. 13, 2021)).

Sampling conducted by Bristol, TN on the Landfill property identified airborne concentrations of Benzene, which is a known carcinogen, skewing higher than those typically found in ambient air. (Compl., ¶ 120.) Measurements in Bristol, TN show ambient air concentrations that are about 15 times higher the current long-term average “normal” background levels. (Compl., ¶ 120.) 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. (Compl., ¶ 120.)

## **VI. DEQ’S EXPERT PANEL.**

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, DEQ convened an Expert Panel on March 1, 2022, to address the situation. 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. *See Ex. 1, Expert Report, Executive Summary.* The Panel’s work and recommendations are set forth in their Expert Report. (Compl., ¶¶ 123-125.)

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.” *See Ex. 1, 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.*, p. 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.

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

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 them, and according to recent statements of Eads, Bristol, VA may not take substantive corrective action for another year or more. 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.<sup>11</sup> Additionally, its Vice-Mayor, Neal Osborne, acknowledged on May 24, 2022 that Bristol, VA “could dip into alternative funding sources to pay for the landfill fixes and closure,” including “some federal funds set aside via ARPA, the American Recovery Plans.”<sup>12</sup>

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<sup>11</sup> See <https://www.bristolva.org/DocumentCenter/View/3597/Administration-Recommended-Budget-for-2022-2023>, p. 123 (last visited May 23, 2022) (identifying an “unassigned” \$22,237,707 in the General Fund).

<sup>12</sup> 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](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).

The Expert Report also makes recommendations regarding the continued operation and closure of the Landfill. *See* **Ex. 1**, Expert Report, pp. 13-15. The Panel concluded that continuing Landfill operations while implementing the recommendations for mitigating odors would be “problematic”, and Bristol, VA “should strongly 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. 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.

## **VII. THE IMPACTS ON BRISTOL, TN AND ITS CITIZENS.**

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. (Compl., ¶ 131.)

Bristol, VA’s negligent maintenance and operation of the Landfill, which has manifested in multiple repeated and continuing violations of 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. (Compl., ¶ 136.) 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. **Exhibit 19** (Declaration of Mike Carrier (“Carrier Dec.”), ¶¶ 11-12); **Exhibit 20** (Declaration of Bill Sorah (“Sorah Dec.”), ¶ 7.)
- 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. **Exhibit 21** (Declaration of Dr. Annette Tudor (“Tudor Dec.”), ¶ 5); **Exhibit 22** (Declaration of Ed DePew (“DePew Dec.”), ¶¶ 3-4); **Ex. 20** (Sorah Dec., ¶¶ 5, 7.)

- 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. **Exhibit 23** (Declaration of Terry Napier (“Napier Dec.”), ¶¶ 4-5, 7-8); **Ex. 20** (Sorah Dec., ¶¶ 5,7,9.)

Bristol, VA’s negligent operation and maintenance of the Landfill, including violations of its air and waste permits, 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. (Compl., ¶ 140.) Further, 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. (Compl., ¶ 141.)

To date, Bristol, TN has 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. **Ex. 19** (Carrier Dec., ¶ 16.)
- Air purifiers for Slater Community Center at cost of approximately \$3,185. **Ex. 23** (Napier Dec., ¶¶ 11-13.)
- Air purifiers for school system at cost of approximately \$6,000. Filter replacements for the units will amount to \$1,800 every six months. **Ex. 21** (Tudor Dec., ¶ 7.)
- Air testing in schools at cost of over \$5,100. **Ex. 22** (DePew Dec., ¶ 9.)
- \$30,000 for air purifier assistance program. **Ex. 20** (Sorah Dec., ¶ 11.)

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. **Ex. 20** (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. **Ex. 22**, (DePew Dec., ¶¶ 6-7.) 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. **Ex. 20** (Sorah Dec., ¶ 12.)

## ARGUMENT

### I. LEGAL STANDARD.

The court exercises its discretion in determining whether to grant a preliminary injunction. *See Pashby v. Delia*, 709 F.3d 307, 319 (4th Cir. 2013). To obtain a preliminary injunction, the moving party “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). “Environmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, i.e., irreparable. If such injury is sufficiently likely, therefore, the balance of harms will usually favor the issuance of an injunction to protect the environment.” *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987). *See also Or. State Pub. Interest Research Group v. Pac. Coast Seafoods Co.*, 374 F. Supp. 2d 902, 907 (D. Ore. 2005) (“Proof of ongoing violations of applicable federal and local discharge standards is sufficient to find irreparable injury.”).

While preliminary injunctions often preserve the status quo, “[i]f the currently existing status quo itself is causing one of the parties irreparable injury, it is necessary to alter the situation so as to prevent the injury, including “by allowing the parties to take proposed action that the court finds will minimize the irreparable injury.” *Canal Auth. of Florida v. Callaway*, 489 F.2d 567,

576 (5th Cir. 1974). “The focus always must be on prevention of injury by a proper order, not merely on preservation of the status quo.” *Id.* A preliminary injunction may be granted on the basis of evidence “that is less complete than in a trial on the merits.” *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981).

## **II. THERE IS A STRONG LIKELIHOOD THAT BRISTOL, TN WILL SUCCEED ON THE MERITS OF ITS CLAIMS.**

Bristol, TN has a strong likelihood of success on the merits on each of the three claims it has asserted: (1) violations of the CAA; (2) violations of RCRA; and (3) public nuisance.

### **A. Bristol, VA has violated the CAA by repeatedly violating the Title V and NSR Permits.**

Bristol, TN has brought this citizen suit under the CAA based on Bristol, VA’s repeated violations of the conditions set forth in its Title V and NSR Permits relating to its operation of the Landfill. *See, e.g., United States v. Duke Energy Corp.*, 171 F. Supp. 2d 560, 565 (M.D.N.C. 2001) (“Under the plain terms of [42 U.S.C. § 7604], the violation of an emission standard or limitation may serve as the basis for a citizen suit brought under [§ 7604(a)(1)] or one brought pursuant to [§ 7604(a)(3)].”). “Strict enforcement of applicable permits is in accordance with the legislative history of the Clean Air Act, which ‘plainly reflects a congressional intent that claims of technological and economic infeasibility not constitute a defense to an adjudication of violation of applicable’ Clean Air Act requirements.” *St. Bernard Citizens for Env’tl. Quality, Inc. v. Chalmette Ref., L.L.C.*, 500 F. Supp. 2d 592, 609 (E.D. La. 2007) (quoting *Friends of the Earth v. Potomac Elec. Power Co.*, 419 F. Supp. 528, 535 (D.D.C. 1976)).

As detailed in the Complaint and above, it is undisputed that Bristol, VA has repeatedly violated—and continues to violate—numerous provisions of the Title V and NSR Permits as described in the NOV’s issued by DEQ. (Compl., ¶¶ 146-194.) These violations relate to the same or similar conditions in the permits, including (a) multiple exceedances of gas wellhead

temperatures; (b) multiple exceedances of oxygen concentrations in gas wellheads; and (c) multiple instances of positive pressure in gas wellheads. (Compl., ¶¶ 151-159, 171-183.)

Bristol, VA has acknowledged these violations. For example, in response to the Second CAA NOV, Bristol, VA conceded the violations of Permit Condition No. 2 related to exceedances of gas wellhead temperatures took place. In that same letter, Bristol, VA identified certain actions it was planning to take to respond to violations but acknowledged that those actions were not enough and stated the Landfill will *continue to exceed* the temperature, oxygen, and pressure requirements. See **Exhibit 24** (Letter from Eads (Aug. 27, 2021)). This proved true. According to the May 13, 2022 data submitted by Bristol, VA to DEQ, temperature exceedances were recorded in multiple wells in January, February, March, April, and May 2022. See **Ex. 9** (May 13, 2022 Status Report.) On May 3, 2022, DEQ issued the Fifth CAA NOV, indicating that temperature exceedances continued to take place at the Landfill. Moreover, the Expert Report explains how the Landfill continues to exceed the allowed temperatures. See **Ex. 1** (Expert Report, p. 6).

**B. Bristol, VA has violated RCRA by failing to comply with the SWP 588, which is causing a substantial endangerment to health and the environment.**

As explained in the Complaint and above, Bristol, VA's failure to properly operate and maintain the Landfill in accordance with the SWP 588 has caused the Landfill to emit noxious odors that are so severe as to cause an emergency situation that is substantially endangering the health and environment around the Landfill. (Compl., ¶¶ 195-203.) DEQ has issued Bristol, VA multiple deficiency letters and NOVs detailing Bristol, VA's failures to contain and eliminate the noxious odors, including its failure to (a) repair pumps at the Landfill, (b) comply with its own odor management plan, and (c) place adequate cover over the waste at the Landfill. (Compl., ¶¶

65, 67, 81.) DEQ's extraordinary action of convening an Expert Panel to address the issues at the Landfill reflects the danger that the Landfill poses to health and the environment.

Bristol, VA has repeatedly acknowledged that the Landfill is endangering the public, including its own citizens. In October 2021, Eads 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 25** (email). On January 3, 2022, Eads told the 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 26** (letter). As discussed above, the noxious odors created by the Landfill are adversely affecting the health of Bristol, TN employees to the extent that they cannot perform their jobs. (Compl., ¶¶ 136-139.) Additionally, elevated concentrations of Benzene have also been identified in the air at the Landfill and in the surrounding properties. Benzene concentrations in the air skew higher—about 15 times higher—than those typically found in ambient air in the United States. (Compl., ¶ 120.) The data suggest that Benzene emissions from the Landfill (as opposed to emissions from other sources) likely dominate and account for most of the substantially elevated concentrations relative to ambient air over otherwise similar cities in the United States. (*Id.*) In other words, it is likely that the Landfill is the source of elevated emissions. This contaminated air alone may pose significant risk of long-term impacts on people’s health. If elevated concentrations were to persist for many years to come, there are significant risks of developing irreversible adverse effects on human health.

For these reasons, there is a substantial likelihood that Bristol, TN will prevail on its claim under RCRA.

**C. Bristol, VA has created a public nuisance under Virginia law.**

To prove the existence of a public nuisance under Virginia law, Bristol, TN must show that Bristol, VA has negligently maintained and operated the Landfill, which has created a public nuisance that is dangerous to the public. See *Chapman v. City of Virginia Beach*, 252 Va. 186, 192 (1996) (“A cause of action for public nuisance is based on a claim of injury resulting from a condition which is dangerous to the public.”); *Beckett v. Bundick (In re Bundick)*, 303 B.R. 90, 113 (Bankr. E.D. Va. 2003) (“Under Virginia law, a public nuisance is an act or condition that unlawfully operates to injure an indefinite number of people . . . including affecting the safety, health or morals of the public, or working a substantial annoyance, inconvenience or injury to the public in general.”) (citing *Nat’l. Org. for Women v. Operation Rescue*, 726 F. Supp. 1483, 1495 (E.D. Va. 1989)).<sup>13</sup>

The record is replete with evidence that Bristol, VA has negligently maintained and operated the Landfill, including the multiple NOV, Warning, and Deficiency Letters detailing its violations of its air and solid waste permits and associated regulations, as well as the Expert Report itself. As Eads stated to Bristol, VA’s City Council in January 2021:

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.

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<sup>13</sup> The Virginia Supreme Court has long “recognized that a municipal corporation may not be immune from liability for creating or maintaining a nuisance.” *Taylor v. Charlottesville*, 240 Va. 367, 373 (1990). A municipal corporation is not protected by sovereign immunity unless (1) the condition claimed to be a nuisance is authorized by law, and (2) the act creating or maintaining the nuisance is performed without negligence. *Virginia Beach v. Steel Fishing Pier*, 212 Va. 425, 427 (1971).

**Exhibit 27.** Eads subsequently 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 permits, and other items. *See Exhibit 28* (Email from Eads (Apr. 22, 2021)). Perhaps Eads said it best when he referred to the Landfill as a “monumental disaster”.

Other examples of Bristol, VA’s negligent operation and maintenance of the Landfill include:

- Failing to properly cover the waste at the Landfill as required by the SWP 588 and associated regulations;
- Failing to adequately staff and fund the Landfill;
- Failing to comply with its own odor management plan; and
- Failing to immediately implement the recommendations of the Expert Panel.

Bristol, VA’s negligent operation and maintenance of the Landfill has caused the Landfill to emit noxious odors, which, as described above, pose significant dangers to the public, including Bristol, TN. The adverse health effects caused by the noxious odors are well documented and are what prompted DEQ to use expert funds to establish an expert panel to address the situation.

For these reasons, there is a substantial likelihood that Bristol, TN will succeed on the merits of its public nuisance claim.

### **III. WITHOUT THE INJUNCTION, BRISTOL, TN WILL CONTINUE SUFFERING IRREPARABLE INJURY.**

Bristol, VA and DEQ have both acknowledged the ongoing harmful impact of the Landfill. The environmental injuries caused by the noxious odors coming from the Landfill are irreparable. *See Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987) (“Environmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, *i.e.*, irreparable.”); *Or. State Pub. Interest Research Group v. Pac. Coast Seafoods*

*Co.*, 374 F. Supp. 2d 902, 907 (D. Ore. 2005) (“Proof of ongoing violations of applicable federal and local discharge standards is sufficient to find irreparable injury.”). Bristol, TN has suffered these irreparable injuries since the fall of 2020, and it will continue to do so until Bristol, VA takes action to address the noxious odors coming from the Landfill. The injunctive relief sought by Bristol, TN is directed at forcing Bristol, VA to take immediate action—as recommended by the Expert Panel—that will help mitigate the noxious odors coming from the Landfill, which also will force Bristol, VA to comply with its air and waste permits. Bristol, VA has not taken the necessary actions to implement these recommendations – and its past track record demonstrates that it will not do so unless required. Bristol, TN simply cannot wait another year (or more), as suggested by Eads, to see if Bristol, VA will comply with the law.

#### **IV. THE EQUITIES STRONGLY FAVOR ISSUANCE OF A PRELIMINARY INJUNCTION.**

As the Supreme Court held in *Amoco*, in cases like this involving environmental damage, “the balance of harms will usually favor the issuance of an injunction to protect the environment.” *Amoco*, 480 U.S. at 545. The need to prevent further harm to Bristol, TN substantially outweighs any harm that Bristol, VA may claim. It is required to comply with its air and solid waste permits, and it has a duty to properly operate and maintain the Landfill. Requiring Bristol, VA to do so cannot cause it harm.

Bristol, VA may claim that it lacks the resources necessary to comply with the requested injunction. That excuse lacks merit, as Bristol, VA has approximately \$20 million in unsecured funds that it can use to comply. Regardless, lack of funding is not a defense to compliance with federal law. See *St. Bernard Citizens for Env'tl. Quality, Inc. v. Chalmette Ref., L.L.C.*, 500 F. Supp. 2d 592, 609 (E.D. La. 2007) (“Strict enforcement of applicable permits is in accordance with the legislative history of the Clean Air Act, which ‘plainly reflects a congressional intent that

claims of technological and economic infeasibility not constitute a defense to an adjudication of violation of applicable' Clean Air Act requirements.”) (quoting *Friends of the Earth v. Potomac Elec. Power Co.*, 419 F. Supp. 528, 535 (D.D.C. 1976)).

Bristol, VA may also claim that it is working with DEQ to develop an implementation plan to address the Expert Report, but its response to DEQ on May 18, 2022 was equivocal at best. Given the ongoing emergency, Bristol, TN cannot wait until July 6, 2022, much less another year or more, to see if Bristol, VA will take the very actions it should have been taking over the past several months. The Expert Panel recommendations outlined immediate actions that should be taken to minimize the ongoing harms, and to develop the information necessary to address the more structural issues in the long term. Action is needed now to implement these immediate action items, even if Bristol, VA is developing its long-term plan over the next 60 days. Moreover, the Expert Panel noted that these immediate items could not effectively be implemented while waste continues to be accepted for disposal. Thus, the cessation of waste must take place immediately.

#### **V. ISSUING THE INJUNCTION WOULD SERVE THE PUBLIC INTEREST.**

This Court's issuance of a preliminary injunction as requested by Bristol, TN will undoubtedly serve the interest of the public of Bristol, TN. *See, e.g., W. Va. Highlands Conservancy v. Brooks Run Mining Co., LLC*, 2022 U.S. Dist. LEXIS 39901, \*23-24 (N.D. W.Va. Mar. 7, 2022) (“given the clear violations of the NPDES Permit by Defendant, the Court finds that the public interest would not be disserved by an injunction”). In addition to serving the public interest of Bristol, TN, granting an injunction would also serve the broader public interest by protecting the environment, as well as the health of the citizens of Bristol, TN, Bristol, VA, and the surrounding communities. Bristol, TN seeks relief under the CAA, which is a public interest statute. Congress's objective in passing the CAA was “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)

(emphasis added). Achieving compliance with CAA will benefit the public health and welfare of Bristol, TN.

Similarly, RCRA's Endangerment Clause serves to ensure that waste disposal is adequately protective of public health. RCRA's standard is intentionally flexible and lenient in favor of protecting public health, welfare, and the environment. *Interfaith Cmty. Org. v. Honeywell Int'l, Inc.*, 399 F.3d 248, 259 (3d Cir. 2005) (“[I]f an error is to be made in applying the endangerment standard, the error must be made in favor of protecting public health, welfare and the environment.”). RCRA's Endangerment Clause gives the courts the authority and discretion to grant equitable relief as appropriate to eliminate any risk posed by toxic wastes. *Simsbury-Avon Pres. Club, Inc. v. Metacon Gun Club, Inc.*, 575 F.3d 199, 210 (2d Cir. 2009). Relatedly, the purpose of Bristol, TN's public nuisance claim is to require Bristol, VA to take action necessary to eliminate a condition that is a danger to the public. Accordingly, issuing the injunction would be in the public interest.

Moreover, issuing the injunction ensures that the actions the Expert Panel recommended be undertaken immediately will occur. That Panel highlighted the urgency of addressing the deficiencies at the Landfill to prevent the ongoing harms from growing. The Court's action is necessary to protect the public from further harm.

### **CONCLUSION**

For these reasons, Bristol, TN respectfully requests that the Court grant its Motion and enter a preliminary injunction requiring Bristol, VA to take the following actions:

1. Install a sidewall odor mitigation system around the Landfill perimeter;
2. Install and monitor a dedicated system of thermocouples in the waste mass to monitor Landfill temperatures;
3. Prohibit Bristol, VA from accepting any more waste at the Landfill;

4. Provide adequate cover of the waste at the Landfill; and
5. Require Bristol, VA to submit a report within sixty days detailing how the other recommendations of the Expert Panel will be accomplished.

May 26, 2022

Respectfully submitted,

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