

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

CLERK'S OFFICE U.S. DIST. COURT
AT ABINGDON, VA
FILED

JUN 14 2022

JULIA C. DUPLEY, CLERK
BY: *A. Meade*
DEPUTY CLERK

THE CITY OF BRISTOL,)
TENNESSEE,)
)
Plaintiff,)
)
v.)
)
THE CITY OF BRISTOL, VIRGINIA,)
)
Defendant.)

Civil Action No. 1:22-cv-23
PRELIMINARY INJUNCTION ORDER

PRELIMINARY INJUNCTION ORDER

This matter came before the Court on the Stipulation Requesting Entry of Preliminary Injunction Order (ECF No. 7) (the "Stipulation") filed by Plaintiff The City of Bristol, Tennessee ("Bristol TN") and Defendant The City of Bristol, Virginia ("Bristol VA") seeking to enjoin Bristol VA to take certain actions specified herein. Bristol VA consents to the entry of this Preliminary Injunction Order and has agreed to the requested relief.

Upon consideration of the Verified Complaint (ECF No. 1), the Motion for Preliminary Injunction and Memorandum in Support (ECF Nos. 2-3), the Stipulation, and the signature of counsel for the parties below acknowledging that the Motion for Preliminary Injunction has been resolved by entry of this Preliminary Injunction Order, the Court FINDS that:

A. This Court has jurisdiction over the parties to, and the subject matter of, this action, pursuant to 28 U.S.C. §§ 1331, 1332, and 1367, as well as 42 U.S.C. §§ 7604(a) and 6972(a), and Virginia Code § 8.01-328.1.

B. Venue properly lies in this district pursuant to 28 U.S.C. § 1391(b)(1), 42 U.S.C. §§ 7604(c)(1) and 6972(a).

C. Bristol VA agrees that Bristol TN is able to make the requisite showing for the relief requested in the Motion for Preliminary Injunction, and therefore, Bristol TN is entitled to the relief set forth herein.

I.

IT IS HEREBY ORDERED that Bristol TN's Motion for Preliminary Injunction is GRANTED.

II.

IT IS FURTHER ORDERED that Defendant Bristol VA, and its officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of this Preliminary Injunction Order, by personal service or otherwise, and each of them, be and hereby are ENJOINED and are required to take the following actions:

1. Install a sidewall odor mitigation system around the perimeter of Defendant's Bristol Integrated Solid Waste Management Facility located at 2125 Shakesville Road, Bristol, Virginia, 24201 (the "Landfill") in accordance with the Expert Panel Report: Bristol Integrated Solid Waste Management Facility, Bristol, Virginia, dated April 25, 2022 (the "Expert Report"), attached to the Complaint herein as **Exhibit 3**, within 365 days of entry of this Preliminary Injunction Order;
2. Install a dedicated system of thermocouples in the waste mass to monitor Landfill temperatures in accordance with the Expert Report within 90 days of entry of this Preliminary Injunction Order, and conduct such monitoring until the Landfill is permanently closed;
3. Cease the acceptance of all waste at the Landfill within 90 days of entry of this Preliminary Injunction Order;
4. Install cover sufficient to meet the intermediate cover requirements of the Virginia Solid Waste Management Regulations (9 VAC § 20-81-140.B.1.d) within 90 days of entry of the Preliminary Injunction Order;
5. Submit a report to Bristol TN setting forth how Bristol VA will accomplish implementation of all other recommendations of the Expert Report, including the permanent closure of the Landfill, within 60 days of entry of this Preliminary Injunction Order; and
6. Allow Bristol TN and its agents access to the Landfill to confirm compliance with the above actions, upon reasonable notice and during regular business hours.

III.

IT IS FURTHER ORDERED that Defendant Bristol VA, and its officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of this Preliminary Injunction Order, by personal service or otherwise, and each of them, be and hereby are ENJOINED from violating the Clean Air Act, 42 U.S.C. § 7401, *et seq.* (“CAA”), and Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* (“RCRA”), and shall comply with the CAA and RCRA.

IV.

IT IS FURTHER ORDERED that Defendant Bristol VA shall pay to Bristol TN Two Hundred Fifty Thousand Dollars and 00/100 (\$250,000) in immediately available funds no later than July 10, 2022, which represents a portion of the monetary damages and costs, including reasonable attorneys’ and expert witness fees, incurred by Bristol TN relating to this litigation.

V.

IT IS FURTHER ORDERED that no bond shall be required in connection with this Preliminary Injunction Order.

VI.

IT IS FURTHER ORDERED that (a) all other deadlines not set forth in this Preliminary Injunction Order are stayed pending the setting of a status conference before the Court; and (b) discovery is stayed, except that the parties may take discovery related to determining compliance with the terms of this Preliminary Injunction Order.

VII.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction over this action for the purposes of implementing and carrying out the terms of all orders and decrees which may be entered herein and to entertain any suitable application or motion for additional relief within the jurisdiction of this Court. The entry of this Preliminary Injunction Order, and the granting of the

relief set forth herein, is without prejudice to Bristol TN seeking any other relief requested in the Verified Complaint, including, but not limited to, the recovery of additional monetary damages, costs incurred in this litigation, including its reasonable attorneys' and expert witness fees, the imposition of civil penalties, injunctive or other equitable relief, and any and all other relief that that Court deems just and proper.

VIII.

This Preliminary Injunction Order is not a Final Order.

IT IS SO ORDERED.

ENTER: June 14, 2022



SENIOR UNITED STATES DISTRICT JUDGE

WE ASK FOR THIS:

/s/ Michael E. Lacy

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