

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

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

**JURY TRIAL DEMANDED**  
Case No.: 1:22-cv-00023-JPJ

**DEFENDANT’S ANSWER AND AFFIRMATIVE DEFENSES**

Defendant The City of Bristol, Virginia (“Bristol VA”), by counsel, states the following as its Answer to the Complaint filed by Plaintiff the City of Bristol, Tennessee (“Bristol TN”). Bristol VA admits that its Integrated Solid Waste Management Facility located at 2655 Valley Drive, Bristol, Virginia, specifically the landfill known as “Landfill No. 588” (the “Landfill”), has created odors. The Landfill is an old, large rock quarry that is partially filled with decades of garbage collections from both Bristol TN and Bristol VA as well as from other surrounding areas. Bristol VA agrees with Bristol TN that the odor problem must be addressed, and Bristol VA has publicly committed to fix the odor problem and to cease waste disposal at Landfill No. 588. Bristol VA offered the public, including members of the leadership of Bristol TN, to tour the Landfill and review the timeline for remedies to abate the problems. Rather than assist in that effort, the leadership of Bristol TN refused to meet with the leadership of Bristol VA to discuss a plan of action. Instead, Bristol TN hired outside lawyers to file this lawsuit incurring unnecessary legal fees, which will be borne by the citizens of Bristol TN or foisted on their Virginia neighbors. Both municipalities would be better served by a cooperative effort to eliminate the odor

problem. Bristol VA has agreed to fix the issues with the Landfill, and to close it. These steps should put an end to this matter. Continued litigation serves no legitimate purpose.

Bristol VA denies all allegations in the Complaint, except as specifically admitted below. Its responses to the allegations in the Complaint and its defenses to Plaintiff's claims are asserted to protect Bristol VA's legal interests in this litigation and are not made to evade its commitment to eliminating the odor problem that is the subject of this litigation.

Any reference to a presentation, letter, email, or other document herein reflects Plaintiff's use of that description in the Complaint.

### **INTRODUCTION**

The introduction to the Complaint is a narrative that does not require a response. To the extent a response is required, see below:

- In response to the allegations in the first sentence of the Introduction, Bristol VA admits that it owns and operates a solid waste landfill known as "Landfill No. 588"<sup>1</sup> that is located approximately 1,000 feet from Bristol TN.
- In response to the allegations in the second sentence of the Introduction, Bristol VA denies that since the fall of 2020, the odors coming from Landfill No. 588 have been so noxious that living and working in parts of Bristol TN has become almost intolerable.
- Bristol VA admits that the Virginia Department of Environmental Quality ("DEQ") established a panel of experts to determine the actions necessary to address Landfill No. 588's odors. Bristol VA denies the remaining allegations in the third sentence of the Introduction.

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<sup>1</sup> Bristol VA takes the position that "Landfill" referenced in the Complaint is the landfill taking waste under Solid Waste Permit No. 588.

- Bristol VA states that the April 25, 2022, Expert Panel Report is in writing and speaks for itself. Bristol VA denies any further allegations in the fourth sentence of the Introduction.

- In response to the allegations in the fifth sentence of the Introduction, Bristol VA admits that DEQ issued a notice of violation (“NOV”) relating to Landfill No. 588 on February 22, 2021. The February 22, 2021, NOV is in writing and speaks for itself.

- In response to the allegations in the sixth sentence of the Introduction, Bristol VA denies that DEQ issued seven NOVs related to Landfill No. 588.

- Bristol VA denies the allegations in the seventh sentence of the Introduction.

- Bristol VA admits that DEQ issued a warning letter about Landfill No. 588 on May 27, 2021, and May 3, 2022, and that those letters are in writing and speak for themselves. Bristol VA denies the remaining allegations in the eighth sentence of the Introduction.

- In response to the ninth sentence of the Introduction, Bristol VA references its response to Paragraph 113.

- Bristol VA denies the tenth sentence of the Introduction as ambiguous.

- Bristol VA denies the eleventh sentence of the Introduction.

- Bristol VA denies the twelfth sentence of the Introduction.

- Bristol VA denies the thirteenth sentence of the Introduction.

- Bristol VA admits that it has acknowledged the impacts of the odors from Landfill No. 588 on the surrounding community. Bristol VA denies the remaining allegations in the fourteenth sentence of the Introduction.

- In response to the allegations in the fifteenth sentence of the Introduction, Bristol VA states that the October 24, 2021, email from Randy Eads is in writing and speaks for itself.

- In response to the allegations in the sixteenth sentence of the Introduction, Bristol VA states that the January 3, 2022, Letter from R. Eads is in writing and speaks for itself.

- In response to the allegations in the seventeenth sentence of the Introduction, Bristol VA states that the May 25, 2022, Bristol Herald Courier article cited in footnote 1 is in writing and speaks for itself.

- In response to the allegations in the eighteenth sentence of the Introduction, Bristol VA admits that when it constructed Landfill No. 588, it received permits requiring it to comply with certain federal and state regulations, and that those permits are in writing and speak for themselves.

- Bristol VA admits that it has been unable to comply with all permit requirements but denies the remaining allegations in the nineteenth sentence of the Introduction.

- In response to the allegations in the twentieth sentence of the Introduction, Bristol VA incorporates its response to Paragraph 123.

- In response to the allegations in the twenty-first sentence of the Introduction, Bristol VA states that the August 25, 2022, Expert Panel Report is in writing and speaks for itself.

- In response to the allegations in the twenty-second sentence of the Introduction, Bristol VA states that the August 25, 2022, Expert Panel Report is in writing and speaks for itself.

- In response to the allegations in the twenty-third sentence of the Introduction, Bristol VA states that the August 25, 2022, Expert Panel Report is in writing and speaks for itself.

- In response to the allegations in the twenty-fourth sentence of the Introduction, Bristol VA states that the August 25, 2022, Expert Panel Report is in writing and speaks for itself.

- Bristol VA denies the allegations in the twenty-fifth sentence of the Introduction.

- In response to the allegations in the twenty-sixth sentence of the Introduction, Bristol VA states that the May 25, 2022, Bristol Herald Courier article is in writing and speaks for itself.
- Bristol VA denies the allegations in the twenty-seventh sentence of the Introduction.
- In response to the allegations in the twenty-eighth sentence of the Introduction, Bristol VA admits that no government regulator has initiated a legal proceeding against the Landfill but denies that seven NOV's have been issued relating to Landfill No. 588.
- The allegations in the twenty-ninth sentence of the Introduction constitute a legal conclusion to which no response is required. To the extent one is required, Bristol VA denies these allegations.
- Bristol VA denies the allegations in the thirtieth sentence of the Introduction.
- Bristol VA denies the allegations in the thirty-first sentence of the Introduction.

#### **PARTIES**

1. Bristol VA admits that Bristol TN is adjacent to Bristol VA, separated by the state line between Virginia and Tennessee. Bristol VA lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 1 and they are therefore denied.
2. Bristol VA lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 2 and they are therefore denied.
3. The allegations in Paragraph 3 state a legal conclusion and require no response. To the extent a response is required, Bristol VA denies the allegations in Paragraph 3.

4. Bristol VA admits it is a municipality organized under the laws of the Commonwealth of Virginia and that it solely owns and operates Landfill No. 588, which is located at 2655 Valley Drive, Bristol, Virginia 24201, the correct address for the Landfill. Bristol VA admits that it is the permittee listed on Landfill No. 588's solid waste and air permits.

5. The allegations in Paragraph 5 state a legal conclusion and require no response. To the extent a response is required, Bristol VA denies the allegations in Paragraph 5.

#### **JURISDICTION AND VENUE**

6. Bristol VA admits this Court has subject matter jurisdiction over this matter.

7. Bristol VA admits this Court has personal jurisdiction over it.

8. Bristol VA admits venue is proper in this Court.

9. The allegations in Paragraph 9 state a legal conclusion and require no response. To the extent a response is required, Bristol VA denies the allegations in Paragraph 9.

10. Bristol VA admits that Bristol TN served a Notice of Intent ("NOI") on December 8, 2021. The remaining allegations in Paragraph 19 state a legal conclusion and require no response. To the extent a response is required, Bristol VA denies those allegations.

11. Bristol VA admits the allegations in Paragraph 11.

12. Bristol VA admits the allegations in Paragraph 12.

13. Bristol VA admits that neither the EPA nor DEQ have commenced a civil action related to Landfill No. 588. Bristol VA denies the remaining allegations in Paragraph 13.

14. Bristol VA admits the allegations in Paragraph 14.

#### **THE STATUTORY REGULATION OF THE LANDFILL**

15. The allegations in Paragraph 15 state a legal conclusion and require no response. To the extent a response is required, Bristol VA denies the allegations in Paragraph 15.

16. The allegations in Paragraph 16 state a legal conclusion and require no response. To the extent a response is required, Bristol VA denies the allegations in Paragraph 16.

17. Bristol VA admits that DEQ was issued a Title V permit and New Source Review (“NSR”) permits for Landfill No. 588 and states that the law governing such permits speaks for itself. Bristol VA denies the remaining allegations in Paragraph 17.

18. The allegations in Paragraph 18 state a legal conclusion and require no response. To the extent a response is required, Bristol VA denies the allegations in Paragraph 18.

19. The allegations in Paragraph 19 state a legal conclusion and require no response. To the extent a response is required, Bristol VA denies the allegations in Paragraph 19.

20. Bristol VA admits that Congress passed RCRA in 1976. The remaining allegations in Paragraph 20 state a legal conclusion and require no response. To the extent a response is required, Bristol VA denies the remaining allegations in Paragraph 20.

21. The allegations in Paragraph 21 state a legal conclusion and require no response. To the extent a response is required, Bristol VA denies the allegations in Paragraph 21.

22. The allegations in Paragraph 22 state a legal conclusion and require no response. To the extent a response is required, Bristol VA denies the allegations in Paragraph 22.

23. The allegations in Paragraph 23 state a legal conclusion and require no response. To the extent a response is required, Bristol VA denies the allegations in Paragraph 23.

## **FACTS**

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

#### **A. The Solid Waste Permits.**

24. Bristol VA admits there are three landfill areas within its corporate limits that are owned by Bristol VA and each has its own unique operational history and status. Bristol VA admits that all three landfills have accepted waste that includes municipal solid waste and special

waste such as tires, white goods, wood waste, yard waste, and construction and demolition material and that the first landfill started accepting solid waste in approximately 1978. Bristol VA denies the remaining allegations in Paragraph 24.

25. Bristol VA believes that Landfill No. 221 operated from approximately 1977 until 1986. Bristol VA admits the remaining allegations in Paragraph 25.

26. Bristol VA admits that the second landfill was permitted by DEQ under Solid Waste Permit No. 498 (“Landfill No. 498”) and that Bristol VA accepted waste at it from 1986 until 2002. Bristol VA also admits that Landfill No. 498 remains open but is inactive and not accepting waste. Bristol VA denies that mining is taking place currently inside Landfill No. 498 and denies any other remaining allegations in Paragraph 26.

27. Bristol VA admits that Landfill No. 588 is actively taking waste pursuant to Solid Waste Permit No. 588 (“SWP 588”) issued by DEQ on February 15, 1996. Bristol VA admits that Landfill No. 588 was created through the reclamation of an abandoned mining quarry and has been accepting waste since March 1998. Bristol VA admits that Landfill No. 588 is the only landfill it owns that is currently permitted to accept waste. The remaining allegations in Paragraph 27 are legal conclusions and require no response. To the extent a response is required, Bristol VA denies the remaining allegations in Paragraph 27.

28. Bristol VA states that SWP 588 is in writing and speaks for itself. Bristol VA denies any remaining allegations in Paragraph 28.

29. Bristol VA states that SWP 588 is in writing and speaks for itself. Bristol VA denies any remaining allegations in Paragraph 29.

30. Bristol VA states that SWP 588 is in writing and speaks for itself. Bristol VA denies any remaining allegations in Paragraph 30.



31. Bristol VA states that SWP 588 is in writing and speaks for itself and admits that the leachate collection system is required to function as a closed system and that leachate should not come into direct contact with ambient air. Bristol VA denies the remaining allegations in Paragraph 31.

32. Bristol VA admits that leachate is a liquid that has passed through or emerged from solid waste. Bristol VA also admits that leachate from Landfills Nos. 498 and 588 is pumped into the local sanitary sewer system and treated at the Bristol Regional Wastewater Treatment Plant located in Bristol TN. Bristol VA also states that SWP 588 is in writing and speaks for itself and denies the remaining allegations in Paragraph 32.

**B. The Air Permits.**

33. Bristol VA admits that in addition to SWP 588, it operated Landfill No. 588 under two air permits, the Title V Permit and the NSR Permit. Bristol VA states that the Title V Permit and NSR Permit are in writing and speak for themselves and deny any remaining allegations in Paragraph 33.

34. Bristol VA admits that the DEQ issued the Title V Permit No. SWR011184 on March 13, 2021. Bristol VA states that the Title V Permit is in writing and speaks for itself and denies the remaining allegations in Paragraph 34.

35. Bristol VA admits that it was issued the NSR permit on July 7, 2003, which was most recently amended on September 30, 2015. Bristol VA states that the NSR Permit is in writing and speaks for itself and denies the remaining allegations in Paragraph 35.

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

36. Bristol VA denies the allegations in Paragraph 36 except to state that any statements from the EPA and U.S. Agency for Toxic Substances and Disease Registry (ATSDR”) are in writing and speak for themselves.

37. Bristol VA states that the Title V Permit and NSR Permit are in writing and speak for themselves. Bristol VA admits that its three landfills are equipped with landfill gas collection and control systems (“LGCCSs”) and denies any remaining allegations in Paragraph 37.

38. Bristol VA lacks knowledge or information sufficient to form a belief about the truth of when it constructed an active LGCCS in the landfill operating under SWP No. 221, and therefore denies that it was constructed in July 2000. Bristol VA admits the remaining allegations in Paragraph 38 but objects to its relevance as it involves a landfill that is not at issue in this litigation.

39. Bristol VA lacks knowledge or information sufficient to form a belief about the truth of when it expanded the LGCCS into Landfill No. 498, and therefore denies that it expanded it in October 2002. Bristol VA admits the remaining allegations in Paragraph 39 but objects to its relevance as it involves a landfill that is not at issue in this litigation.

40. Bristol VA lacks knowledge or information sufficient to form a belief about the truth of when it was required to install an active LGCCS in landfill No. 588, and therefore denies it was required to do so by May 2001. Bristol VA admits the remaining allegations in Paragraph 40.

41. Bristol VA admits that the LGCCS delivers gas from Landfill No. 588 to an on-site power plant owned and operated by a third party, where the gas is combusted in a turbine to

produce electricity. It also admits that when the power plant is unavailable, gas is combusted in the flare at Landfill No. 588.

42. Bristol VA states that the Title V and NSR permits are in writing and speak for themselves and denies any remaining allegations in Paragraph 42.

43. Bristol VA states that the Title V and NSR permits are in writing and speak for themselves and denies any remaining allegations in Paragraph 43.

44. Bristol VA states that the Title V and NSR permits are in writing and speak for themselves and denies any remaining allegations in Paragraph 44.

45. Bristol VA admits that it is subject to certain requirements under the Title V and NSR permits and that those permits are in writing and speak for themselves. Bristol VA denies any remaining allegations in Paragraph 45.

## ***II. Alleged Failures to Comply with Permit Requirements.***

### **A. Alleged violations of the air permits.**

46. Bristol VA admits that it corresponded with DEQ about odors from Landfill No. 588 in January 2021 and that the Title V and NSR permits, along with the February 22, 2021, Notice of Violation (“NOV”) from DEQ, are in writing and speak for themselves. Bristol VA lacks knowledge or information sufficient to form a belief about the truth of the allegations about DEQ observations, and therefore denies them. Bristol VA denies the remaining allegations in Paragraph 46.

47. Bristol VA states that the February 22, 2021, NOV from DEQ is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 47.

48. Bristol VA states that the March 4, 2021, letter from R. Eads to DEQ is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 48.

49. Bristol VA states that the August 20, 2021, CAA NOV is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 49 and its footnote.

50. Bristol VA states that the August 27, 2021, letter from R. Eads to DEQ is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 50.

51. Bristol VA states that the September 22, 2021, NOV from DEQ is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 51.

52. Bristol VA states that the December 10, 2021, NOV from DEQ, along with the NOVs from August 20, 2021 and September 22, 2021, are in writing and speak for themselves. Bristol VA denies the remaining allegations in Paragraph 52.

53. Bristol VA states that the May 3, 2022, NOV from DEQ and May 13, 2022, Status Report are in writing and speak for themselves. Bristol VA denies the remaining allegations in Paragraph 53.

54. Bristol VA denies the allegations in Paragraph 54.

**B. Alleged violations of SWP 588.**

55. Bristol VA admits that in December 2020, it became aware of odors at Landfill No. 588. Bristol VA lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 55, and therefore denies them.

56. Bristol VA states that the January 11, 2021, letter from DEQ is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 56.

57. Bristol VA lacks knowledge or information sufficient to form a belief about the truth of when the DEQ asked it to come up with a mapping system to track odor complaints, and therefore denies DEQ asked this on January 13, 2021. Bristol VA admits that DEQ asked Bristol VA to come up with a mapping system to track odor complaints related to Landfill No. 588.

58. Bristol VA lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 58, and therefore denies them.

59. Bristol VA states that the May 27, 2021, letter from DEQ is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 59.

60. Bristol VA states that the May 27, 2021, letter from DEQ is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 60.

61. Bristol VA states that the June 15, 2021, letter from Bristol VA is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 61.

62. Bristol VA admits that in August 2021, the pump at Landfill No. 588 was still functioning and therefore, it was not replaced. Bristol VA states that the August 31, 2021, letters between DEQ and Bristol VA are in writing and speak for themselves. Bristol VA denies the remaining allegations in Paragraph 62.

63. Bristol VA states that the August 31, 2021, CASE Report is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 63.

64. Bristol VA states that the November 5, 2021, letter from DEQ is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 64.

65. Bristol VA states that the December 7, 2021, NOV from DEQ is in writing and speaks for itself. The allegations in footnotes 6 and 7 of Paragraph 34 state a legal conclusion and require no response. Bristol VA denies the remaining allegations in Paragraph 65.

66. Bristol VA admits that on November 22, 2021, it held a meeting to approve a \$228,656.00 contract with Charles R. Underwood Inc. to replace the pump at Landfill No. 588. Bristol VA further admits that the pump was repaired by January 2022. Bristol VA denies any remaining allegations in Paragraph 66.

67. Bristol VA admits that there was an overflow of stormwater mixed with leachate that took place at Landfill No. 498 in February 2022 but objects to its relevance as Landfill No. 498 is not at issue in this litigation. Bristol VA admits that the overflow at Landfill No. 498 was due to the failure of a check valve and an air lock prevention valve; it denies that the overflow was due to a pump failure. Bristol VA further states that the April 25, 2022, NOV from the DEQ is in writing and speaks for itself and denies any further allegations in Paragraph 67.

68. Bristol VA states that the December 21, 2020, DEQ Inspection Report is in writing and speaks for itself. Bristol VA denies all other allegations in Paragraph 68.

69. Bristol VA states that the August 23, 2021, communication about Landfill No. 588 is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 69.

70. Bristol VA lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 70, and therefore denies them.

71. Bristol VA object to the allegations in Paragraph 71 as they refer to Landfill No. 498, which is not at issue in this litigation. Bristol VA further states that the June 21, 2021, DEQ monthly report, July 31, 2021, DEQ monthly report, and November 4, 2021, DEQ Notes for City of Bristol Landfill are in writing and speak for themselves. Bristol VA denies any remaining allegations in Paragraph 71.

72. Bristol VA objects to the allegations in Paragraph 72 as they refer to Landfill No. 498, which is not at issue in this litigation. Bristol VA further states that the April 25, 2022, NOV from DEQ is in writing and speaks for itself. Bristol VA denies any remaining allegations in Paragraph 72.

73. Bristol VA lacks knowledge or information sufficient to form a belief about the truth of the allegations about complaints that DEQ received, and therefore denies them. Bristol

VA states that the May 3, 2022, letter from DEQ is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 73.

74. The allegations in Paragraph 74 state a legal conclusion and require no response. To the extent a response is required, Bristol VA denies the allegations in Paragraph 74.

***III. Other Alleged Landfill Deficiencies.***

**A. Alleged failure to meet deadlines.**

75. Bristol VA states that the presentation from R. Eads, the February 9, 2021, email from D. Manweiler, and the December 30, 2020, update from R. Eads are in writing and speak for themselves. Bristol VA denies the remaining allegations in Paragraph 75.

76. Bristol VA admits that it issued a Request for Proposal (“RFP”) to undertake the well drilling on Landfill No. 588 on July 16, 2021. It further admits that because the well drilling had to first be designed by engineers, the work to enhance the LGCCS was not started until fall 2021. Bristol VA denies any remaining allegations in Paragraph 76.

77. Bristol VA admits that in September 2021, it began installing 21 additional gas wells to connect to the existing LGCCS in Landfill No. 588. Bristol VA also states that the September 30, 2021, letter from R. Eads to DEQ; October 25, 2021, letter from R. Eads to John Warner; August 23, 2021, Bristol VA letter; and October 18, 2021, correspondence from S. Daniel to J. Hurst are in writing and speak for themselves. Bristol VA denies any remaining allegations in Paragraph 77.

78. Bristol VA admits that it connected the wells to the LGCCS in Landfill No. 588. It further states that the presentation from R. Eads is in writing and speaks for itself. Bristol VA denies any remaining allegations in Paragraph 78.

79. Bristol VA admits that it requested and received approval from the EPA to operate hot wells in Landfill No. 588 in July 2021. Bristol VA further states that the April 15, 2022, Status Report is in writing and speaks for itself and denies the remaining allegations in Paragraph 79.

**B. Alleged complaints regarding the odors from the Landfill.**

80. Bristol VA lacks knowledge or information sufficient to form a belief about the truth of the allegation that DEQ asked Bristol VA to track complaints regarding odors from Landfill No. 588, and therefore denies it. Bristol VA admits that it developed an Odor Control Plan in spring of 2021 and states that the December 21, 2020, DEQ Air Inspection Report is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 80.

81. Bristol VA states that the January 11, 2021, letter from the DEQ is in writing and speaks for itself. Certain allegations in Paragraph 81 contain legal conclusions that require no response. To the extent a response is required, Bristol VA denies those allegations. Bristol VA denies the remaining allegations in Paragraph 81.

82. Bristol VA denies the allegations in Paragraph 82.

83. Bristol VA states that the June 7, 2021, Odor Management Plan Permit is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 83.

84. Bristol VA states that the June 7, 2021, Odor Management Plan Permit is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 84.

85. Bristol VA states that the June 7, 2021, Odor Management Plan Permit is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 85.

86. Bristol VA states that the May 2021, June 2021, July 2021, September 2021, and November 2021 Odor Management Plan Reports are in writing and speak for themselves. Bristol



VA admits that it has recently received odor complaints related to Landfill No. 588 but denies the remaining allegations in Paragraph 86.

87. Bristol VA denies the allegations in Paragraph 87 except that the May 3, 2022, letter from the DEQ speaks for itself.

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

88. Bristol VA denies the allegations in Paragraph 88.

89. Bristol VA denies the allegations in Paragraph 89.

90. Bristol VA states that the June 2019, Independent Cost Analysis Report from SCS is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 90.

91. Bristol VA admits that it did not take actions identified in the June 2019 Independent Cost Analysis Report from SCS and states that the January 27, 2021, email from R. Eads to the Bristol VA City Council is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 91.

92. Bristol VA states that the April 22, 2021, email from R. Eads is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 92.

**D. Alleged failure to properly staff and fund the Landfill.**

93. Bristol VA states that the September 20, 2017, email from A. Hubbard is in writing and speaks for itself. Bristol VA further states that the May 24, 2021, the September 13, 2021, and the September 27, 2021, Bristol Landfill Facility Updates are in writing and speak for themselves. Bristol VA admits that in May 2021, it looked to hire an Environmental and Safety Compliance Officer and, in September 2021, it looked to fill the Landfill Director position. Bristol VA denies the remaining allegations in Paragraph 93, including the allegation that any of its landfills have been "chronically understaffed."

94. Bristol VA admits that it terminated the employee responsible for the reporting violations related to Landfill No. 588 identified by the DEQ and that Landfill No. 588's permits, along with federal and state regulations, require certain reporting of information. It further states that the July 14, 2021, letter from R. Eads and the October 24, 2021, letter from R. Eads are in writing and speak for themselves. Bristol VA lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 94 and therefore denies them.

95. Bristol VA states that the NOV's from DEQ as well as the August 24, 2021, letter from DEQ are in writing and speak for themselves but objects to Landfill No. 498's relevance as it is not at issue in this litigation. Bristol VA denies the remaining allegations in Paragraph 95.

96. Bristol VA states that the letters from DEQ are in writing and speak for themselves but objects to the relevance of the DEQ letters related to Landfill No. 498, which is not relevant to this litigation.

97. Bristol VA denies the allegations in Paragraph 97.

98. Bristol VA admits that Landfill No. 588 has been understaffed since 2021 but denies the remaining allegations in Paragraph 98.

99. Bristol VA states that the January 27, 2021, email from R. Eads to Bristol VA's City Council is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 99.

100. Bristol VA lacks knowledge or information sufficient to form a belief about the truth of the allegations about a DEQ meeting, and therefore denies them. Bristol VA denies the remaining allegations in Paragraph 100.

101. Bristol VA states that the September 30, 2021, letter from R. Eads to DEQ is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 101.

102. Bristol VA admits that in November 2021, it searched for a Public Works Director, a position it has since filled. Bristol VA further admits that in November 2021, it searched for a Solid Waste Disposal Fund Director. Bristol VA admits that it in May 2022, it posted a job for Environmental Safety and Compliance Officer, a position for which it is currently interviewing candidates. Bristol VA denies the remaining allegations in Paragraph 102.

103. Bristol VA states that the February 9, 2022, email from R. Eads is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 103.

***IV. Alleged Consequences of Failure to Operate and Maintain the Landfill.***

**A. Subsurface Reactions/Chimneys.**

104. Bristol VA states that the April 25, 2022, Expert Panel Report is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 104, specifically that it knew one or more subsurface reactions were occurring at Landfill No. 588 as early as 2018 but did not investigate them.

105. Bristol VA admits that on May 9, 2018, pressured smoke and steam began exiting out of an out-of-service condensation pipe in Landfill No. 588; there was no visible fire at this time. Bristol VA states that the April 9, 2021, correspondence from M. Martin to S. Martin is in writing and speaks for itself and denies the remaining allegations in Paragraph 105.

106. Bristol VA admits that it requested a variance from the EPA in summer of 2021, which was approved. Bristol VA denies the remaining allegations in Paragraph 106 except to state that the August 23, 2021, letter from K. Melvin is in writing and speaks for itself.

107. Bristol VA states that the September 30, 2021, correspondence from S. Bowers to S. Hess is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 107.

108. Bristol VA admits that it has identified “chimney,” areas where gas escapes a landfill, at Landfill No. 588 and states that the October 8, 2021 Herald Courier article is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 108.

109. Bristol VA admits that it has identified a “southern chimney” and “western chimney” in Landfill No. 588.

110. Bristol VA states that the January 31, 2022, Western Chimney Landfill Gas Pilot Mitigation Program is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 110.

111. Bristol VA states that the February 9, 2022, and September 26, 2021, emails from R. Eads are in writing and speak for themselves. Bristol VA denies the remaining allegations in Paragraph 111.

**B. Alleged Failure to Identify and Address Benzene Release.**

112. Bristol VA admits that benzene is a common volatile organic compound (“VOC”) that may cause certain types of cancer. Bristol VA denies the remaining allegations in Paragraph 112 except to state that RCRA regulations are in writing and speak for themselves.

113. Bristol VA admits that BVUA has issued NOVs and a consent order related to the leachate at Landfill No. 588. Bristol VA denies the remaining allegations in Paragraph 113.

114. Bristol VA admits that benzene has been detected in air samples at Landfill No. 588. Bristol VA denies the remaining allegations in Paragraph 114.

115. Bristol VA admits that benzene was detected in the leachate from Landfill No. 588 around 2018. Bristol VA denies the remaining allegations in Paragraph 115, including that it “failed to further investigate the Benzene issue” but states that the December 3, 2021 BVUA press release is in writing and speaks for itself.

116. Bristol VA states that the April 25, 2022, Expert Panel Report is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 116.

**C. Alleged Elevated Air Emissions.**

117. Bristol VA admits that several investigations of Landfill No. 588 were conducted by the EPA, including in June 2021, July 2021, and October 2021 and reviewed by the Expert Panel on March 20-22, 2022. Bristol VA states that the April 25, 2022, Expert Panel Report is in writing and speaks for itself and denies any remaining allegations in Paragraph 117.

118. Bristol VA states that the October 19-28, 2021, Tetra Tech Final Air Monitoring Report is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 118.

119. Bristol VA states that the October 2021 statement “EPA Conducts Additional Air Monitoring in Bristol Area” and the October 19-28, 2021, Tetra Tech Final Air Monitoring Report are in writing and speak for themselves. Bristol VA denies the remaining allegations in Paragraph 119.

120. Bristol VA states that the December 17, 2021, Report by Drs. Green and Crouch is in writing and speaks for itself. VA denies the remaining allegations in Paragraph 120.

**D. Alleged Noxious Odors.**

121. Bristol VA lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 121, and therefore denies them.

122. Bristol VA lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 122, and therefore denies them.

***V. Alleged Failure to Take Action to Implement the Recommendations of DEQ's Expert Panel.***

123. Bristol VA admits that the DEQ convened an expert panel on March 1, 2022 to evaluate Landfill No. 588, but denies the remaining allegations in Paragraph 123.

124. Bristol VA admits that the DEQ convened an expert panel on March 1, 2022, consisting of 10 experts. Among the members of the expert panel, there was an individual affiliated with Draper Aden Associates, the consulting firm that had previously performed work for Bristol VA; an individual affiliated with SCS, the current consultants for Bristol VA; and Golder Associates, the consultants for Bristol TN. Additionally, a second individual from SCS attended the meetings held by the expert panel but did not serve on the Expert Panel itself. Bristol VA further states that the Expert Panel Report is in writing and speaks for itself and denies any remaining allegations in Paragraph 124.

125. Bristol VA states that the April 25, 2022, Expert Panel Report is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 125.

126. Bristol VA states that the April 25, 2022, Expert Panel Report is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 126.

127. Bristol VA states that the April 25, 2022, Expert Panel Report is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 127.

128. Bristol VA states that the April 25, 2022, Expert Panel Report is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 128.

129. Bristol VA states that that the May 6, 2022 and May 18, 2022, letters between DEQ and R. Eads to J. Hurst are in writing and speak for themselves. Bristol VA denies the remaining allegations in Paragraph 129 and specifically denies the allegation that it has not taken any action to address the action items identified in the Expert Panel Report.

130. Bristol VA denies the allegations in Paragraph 130.

131. Bristol VA denies the allegations in Paragraph 131.

132. Bristol VA denies the allegations in Paragraph 132.

133. Bristol VA states that the April 25, 2022, Expert Panel Report is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 133.

134. Bristol VA states that the April 25, 2022, Expert Panel Report is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 134.

135. Bristol VA denies the allegations in Paragraph 135.

***VI. Allegations of a Failure to Maintain and Operate the Landfill Adequately Creating of a Public Nuisance and Harming Bristol TN.***

136. Bristol VA denies the allegations in Paragraph 136.

137. Bristol VA specifically denies that it has negligently operated and maintained Landfill No. 588. Bristol VA lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 137, and therefore denies them.

138. Bristol VA specifically denies that it has negligently operated and maintained Landfill No. 588. Bristol VA lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 138, and therefore denies them.

139. Bristol VA specifically denies that it has negligently operated and maintained Landfill No. 588. Bristol VA lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 139, and therefore denies them.

140. Bristol VA specifically denies that it has negligently operated and maintained Landfill No. 588. Bristol VA specifically states that Bristol TN announced in May 2022 the \$30.8 million expansion of Tri-City Extrusion, Inc. bringing fifty new jobs to the area and that as recently as July 2022 that Bristol TN announced the \$21.3 million expansion of the Tennessee Hills

Distillery with an additional 45 new jobs. Bristol VA also states that Bristol TN just announced in August 2022 a \$37 million project to build 165 new homes called The Overlook. Bristol VA lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 140, and therefore denies them.

141. Bristol VA specifically denies that it has negligently operated and maintained Landfill No. 588. Bristol VA lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 141, and therefore denies them.

142. Bristol VA lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 142, and therefore denies them.

143. Bristol VA lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 143, and therefore denies them.

144. Bristol VA lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 144, and therefore denies them.

145. Bristol VA admits that DEQ has not initiated an action against it involving Landfill No. 588. Bristol VA denies the remaining allegations in Paragraph 145.

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

146. Bristol VA incorporates by reference its responses to Paragraph 1 through 145 above.

147. The allegations in Paragraph 147 state a legal conclusion and require no response. To the extent a response is required, Bristol VA denies the allegations in Paragraph 147.

148. The allegations in Paragraph 148 state a legal conclusion and require no response. To the extent a response is required, Bristol VA denies the allegations in Paragraph 148.



149. The allegations in Paragraph 149 state a legal conclusion and require no response. To the extent a response is required, Bristol VA denies the allegations in Paragraph 149.

150. Bristol VA admits it is the owner of Landfill No. 588 and the permittee for the Title V and NSR permits, which are subject to certain standards or limitations under the Clean Air Act.

**A. Alleged Violations of Gas Well Head Temperature Limit.**

151. The allegations in Paragraph 151 state a legal conclusion and require no response. To the extent a response is required, Bristol VA denies the allegations in Paragraph 151.

152. The allegations in Paragraph 152 state a legal conclusion and require no response. To the extent a response is required, Bristol VA denies the allegations in Paragraph 152.

153. The allegations in Paragraph 153 state a legal conclusion and require no response. To the extent a response is required, Bristol VA denies the allegations in Paragraph 153.

154. Bristol VA admits that on five occasions in 2020, temperatures in gas wells # 46 and #47 of Landfill No. 588 exceeded 55°C (131°F). It admits that on two occasions, the high temperatures in gas well #47 lasted for more than 15 days. Bristol VA also admits that DEQ issued a NOV on August 20, 2021, which is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 154.

155. Bristol VA states that the August 23, 2021, EPA letter and September 22, 2021, NOV from DEQ are in writing and speak for themselves. Bristol VA denies the remaining allegations in Paragraph 155.

156. Bristol VA states that the December 10, 2021, NOV from DEQ is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 156.

157. Bristol VA states that the May 3, 2022, NOV from DEQ is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 157.

158. Bristol VA admits that it corrected the temperature exceedances identified by DEQ, just not within 15 days. Bristol VA also admits that it expanded the LGCCS, just not within 120 days. Bristol VA states that the SCS Engineers' May 13, 2022, Status Report is in writing and speaks for itself and denies all remaining allegations in Paragraph 158.

159. Bristol VA denies the allegations in Paragraph 159.

**B. Alleged Violations of Gas Well Head Daily Temperature Readings.**

160. Bristol VA states that the August 23, 2021, letter from the EPA is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 160.

161. Bristol VA admits that it began conducting daily temperature readings for gas well 37 in Landfill No. 588 on October 21, 2021, and gas well 35 in Landfill No. 588 on November 19, 2021. Bristol VA denies the remaining allegations in Paragraph 161.

**C. Alleged Violations of the Requirement to Conduct Enhanced Monitoring.**

162. Bristol VA states that the Title V permit for Landfill No. 588 is in writing and speaks for itself. Bristol VA denies any remaining allegations in Paragraph 162.

163. The allegations in Paragraph 163 state a legal conclusion and require no response. To the extent a response is required, Bristol VA denies the allegations in Paragraph 163.

164. Bristol VA states that the May 3, 2022, NOV from DEQ is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 164.

**D. Alleged Violations of Requirement to Correct Temperature Exceedances.**

165. Bristol VA states that the Title V permit for Landfill No. 588 is in writing and speaks for itself. Bristol VA denies any remaining allegations in Paragraph 165.

166. The allegations in Paragraph 166 state a legal conclusion and require no response. To the extent a response is required, Bristol VA denies the allegations in Paragraph 166.

167. Bristol VA states that the May 3, 2022, NOV from DEQ is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 167.

**E. Alleged Violations of Surface Methane Concentration Monitoring Requirement.**

168. Bristol VA states that the Title V permit for Landfill No. 588 is in writing and speaks for itself. Bristol VA denies any remaining allegations in Paragraph 168

169. The allegations in Paragraph 169 state a legal conclusion and require no response. To the extent a response is required, Bristol VA denies the allegations in Paragraph 169.

170. Bristol VA states that the May 3, 2022, NOV from DEQ is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 170.

**F. Alleged Violations of Gas Well Head Oxygen Concentrations.**

171. Bristol VA states that the Title V and NSR permits for Landfill No. 588 are in writing and speaks for themselves. The allegations in Paragraph 169 that state a legal conclusion require no response. To the extent a response is required, Bristol VA denies the allegations in Paragraph 171.

172. The allegations in Paragraph 172 state a legal conclusion and require no response. To the extent a response is required, Bristol VA denies the allegations in Paragraph 172.

173. Bristol VA states that the August 20, 2021, NOV from DEQ is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 173.

174. Bristol VA states that the September 22, 2021, NOV from DEQ is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 174.

175. Bristol VA states that the December 10, 2021, NOV from DEQ is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 175.

176. Bristol VA states that the August 20, 2021; September 22, 2021; and December 10, 2021, NOVs from DEQ are in writing and speak for themselves. Bristol VA admits that it has initiated action to add additional wells in Landfill No. 588. Bristol VA denies the remaining allegations in Paragraph 176.

**G. Alleged Violations of Positive Gas Well Head Pressure Requirement.**

177. Bristol VA states that the Title V and NSR permits for Landfill No. 588 are in writing and speak for themselves. Bristol VA denies any remaining allegations in Paragraph 177.

178. Bristol VA states that the Title V and NSR permits for Landfill No. 588 are in writing and speak for themselves. Bristol VA denies any remaining allegations in Paragraph 178.

179. The allegations in Paragraph 179 state a legal conclusion and require no response. To the extent a response is required, Bristol VA denies the allegations in Paragraph 179.

180. Bristol VA states that the August 20, 2021, NOV from DEQ is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 180.

181. Bristol VA states that the September 22, 2021, NOV from DEQ is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 181.

182. Bristol VA states that the December 10, 2021, NOV from DEQ is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 182.

183. Bristol VA states that the August 20, 2021; September 22, 2021; and December 10, 2021 NOVs from DEQ are in writing and speak for themselves. Bristol VA denies the remaining allegations in Paragraph 183.

**H. Alleged Violations of Gas Collection System Expansion Requirement.**

184. Bristol VA states that the September 22, 2021, NOV from DEQ is in writing and speaks for itself. Bristol VA admits that it has not yet fully expanded the gas collection system in Landfill No. 588. Bristol VA denies the remaining allegations in Paragraph 184.

**I. Alleged Violations of Monthly Visible Emission Observation Requirement.**

185. Bristol VA states that the Title V and NSR permits for Landfill No. 588 are in writing and speak for themselves. Bristol VA denies any remaining allegations in Paragraph 185.

186. Bristol VA states that the February 22, 2021, NOV from DEQ is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 186.

187. Bristol VA states that the September 22, 2021, NOV from DEQ is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 187.

**J. Alleged Violations of Well Head Monitoring Requirement.**

188. Bristol VA states that the Title V and NSR permits for Landfill No. 588 are in writing and speak for themselves. Bristol VA denies any remaining allegations in Paragraph 188.

189. Bristol VA states that the September 22, 2021, NOV from DEQ is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 189.

190. Bristol VA states that the December 10, 2021, NOV from DEQ is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 190.

191. Bristol VA states that the September 22, 2021 and December 10, 2021, NOVs from DEQ are in writing and speak for themselves. Bristol VA denies the remaining allegations in Paragraph 191.

**K. Alleged Violations of the Requirement to Maintain Emission Records.**

192. Bristol VA states that the Title V permit for Landfill No. 588 and the February 22, 2021, NOV from DEQ are in writing and speak for themselves. Bristol VA denies any remaining allegations in Paragraph 192.

**L. Alleged Violations of Semi-Annual SSM Reporting Requirement.**

193. Bristol VA states that the Title V permit for Landfill No. 588 and the February 22, 2021 NOV from DEQ are in writing and speak for themselves. Bristol VA denies any remaining allegations in Paragraph 193.

**M. Alleged Violations of Requirement to Comply.**

194. Bristol VA states that the Title V permit for Landfill No. 588 speaks for itself. Bristol VA denies the remaining allegations in Paragraph 194.

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

195. Bristol VA incorporates by reference its responses to Paragraph 1 through 194 above.

196. The allegations in Paragraph 196 that state a legal conclusion require no response. To the extent a response is required, Bristol VA denies the allegations in Paragraph 196.

197. The allegations in Paragraph 197 that state a legal conclusion require no response. To the extent a response is required, Bristol VA denies the allegations in Paragraph 197.

198. Bristol VA denies the allegations in Paragraph 198.

199. Bristol VA denies the allegations in Paragraph 199. Bristol VA also objects to the allegations in Paragraph 199 as they refer to Landfill No. 498, which is not at issue in this litigation.

200. Bristol VA lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 200, and therefore denies them.

201. Bristol VA states that the May 3, 2022, NOV from DEQ is in writing and speaks for itself. Bristol VA denies the remaining allegations in Paragraph 201.

202. Bristol VA denies the allegations in Paragraph 202.

203. Bristol VA denies the allegations in Paragraph 203.

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

204. Bristol VA incorporates by reference its responses to Paragraph 1 through 203 above.

205. Bristol VA denies the allegations in Paragraph 205.

206. Bristol VA denies the allegations in Paragraph 206.

207. Bristol VA denies the allegations in Paragraph 207.

208. Bristol VA denies the allegations in Paragraph 208.

209. Bristol VA denies the allegations in Paragraph 209.

210. The allegations in Paragraph 210 that state a legal conclusion require no response.

To the extent a response is required, Bristol VA denies the allegations in Paragraph 210.

211. Bristol VA denies the allegations in Paragraph 211.

212. Bristol VA denies the allegations in Paragraph 212.

All allegations in the Complaint not specifically admitted above are denied.

**AFFIRMATIVE DEFENSES**

In response to Plaintiff's Complaint, Bristol VA responds that Plaintiff's claims are barred in whole or in part by one or more of the following affirmative defenses:

1. Plaintiff's Complaint fails to state a claim upon which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6).
2. Plaintiff failed to mitigate any alleged damages.

3. Upon information and belief, Plaintiffs' claims are barred, in whole or in part, by the applicable statute of limitations and/or time limits prescribed by Virginia law. *See* Va. Code § 15.2-209.
4. To the extent not inconsistent with its defenses, Bristol VA hereby incorporates by reference each and every applicable defense permitted by law.
5. Plaintiff's claims are barred, in whole or in part, by the Virginia Waste Management Act, which authorizes the Virginia Waste Management Board to administer and enforce Virginia's solid waste laws and regulations, including the abatement of nuisances created by the improper operation or management of municipal solid waste landfills. The operation and enforcement powers of the Virginia Waste Management Board abrogates Plaintiff's common law public nuisance claims. *See* Va. Code § 10.1-1402.
6. Upon information and belief, Plaintiff's claims are barred, in whole or in part, by the doctrines of laches, estoppel, waiver, and/or other equitable doctrines.
7. Upon information and belief, Plaintiff's claims are barred, in whole or in part, by the doctrine of sovereign immunity.
8. Upon information and belief, Plaintiff's claims are barred, in whole or in part, by the free public services doctrine which prevents the recovery of expenditures made in the performance of governmental functions occasioned by a tortfeasor's wrongdoing.
9. Plaintiff's claims are barred by the State of Tennessee's application of the Dillon Rule, that the Plaintiff is not expressly authorized nor does it have the implied power to bring this lawsuit against a foreign municipality in a federal court in a foreign jurisdiction.
10. Plaintiff's claims are barred whole or in part because Plaintiff lacks the express authority under Tennessee law to bring such a lawsuit against a Virginia municipality.



11. Plaintiff's claims are barred to the extent that they are speculative and seek compensation for causes of action that have not yet accrued or for damages alleged to be incurred in the future, such as future medical care, medical monitoring, loss of property value, or lost business profits.

12. Bristol VA denies all allegations of wrongdoing and damage as alleged in the Complaint, but if in fact the Plaintiff did sustain damages, Plaintiff's damages do not include special damages, the amount of which is not specified in the Complaint.

13. As a matter of law and public policy, punitive damages should not be awarded to Plaintiff against Bristol VA for at least the following reasons:

- a. Plaintiff's claims seeking punitive damages violate Bristol VA's due process rights under the U.S. Constitution and the Virginia Constitution;
- b. Considerations of due process, comity and state sovereignty bar any attempt to punish Bristol VA, except to the extent its alleged conduct had a direct impact on and a direct nexus to the specific harm allegedly suffered by Plaintiff;
- c. The pervasive regulation of Integrated Solid Waste Management Facilities by VA DEQ and the U.S. CAA and U.S. RCRA bar any attempt to punish Bristol VA;
- d. Bristol VA did not engage in conduct of an aggravated, extreme, outrageous, or malicious character.

14. Bristol VA hereby gives notice that it may rely on other defenses if and when such defenses become known during the course of litigation, and hereby reserve the right to amend the Answer to assert any other defenses as they become known or available.

**WHEREFORE**, having denied the material allegations against it and having asserted its affirmative defenses to Plaintiff's Complaint, Bristol VA respectfully requests this Court enter judgment in its favor against Plaintiff and award such further relief this Court may deem appropriate. Bristol VA additionally requests a trial by jury.

Dated: August 19, 2022

Respectfully submitted,

THE CITY OF BRISTOL, VIRGINIA

*/s/ Justin D. Howard*

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Virginia*

**CERTIFICATE OF SERVICE**

I hereby certify that on August 19, 2022, I caused the foregoing to be filed with the Clerk of the U.S. District Court for the Western District of Virginia using the Court's CM/ECF system, which will electronically serve copies of the same on counsel for all parties.

*/s/ Justin D. Howard*

\_\_\_\_\_  
Justin D. Howard

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