

**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. )

Case No. 1:22CV00023

**PLAINTIFF’S RESPONSE TO DEFENDANT’S MOTION FOR MEDIATION**

Plaintiff the City of Bristol, Tennessee (“Plaintiff” or “Bristol, TN”), through its undersigned counsel, respectfully submits this response to City of Bristol, Virginia’s (“Defendant” or “Bristol, VA”) Motion for Mediation (ECF No. 57) in accordance with Local Rule 11(c).

Bristol, TN and its residents have been suffering from the impacts of the Defendant’s mismanagement of its Landfill for over two years, a situation that Bristol, VA’s City Manager described as a “monumental disaster.”<sup>1</sup> Defendant’s mismanagement and disregard for regulatory requirements is well-documented in Plaintiff’s Complaint. These actions have caused significant environmental problems, the most obvious being the noxious odors from the Landfill that have been permeating Bristol, TN.

Since the odor issues commenced, Bristol, TN has pleaded with Defendant to take action and fix the problem it created. Bristol, TN has never equivocated about the resolution it seeks: a

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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).

detailed action plan with a specific timeline for implementation to resolve the odor issues, and permanent closure of the Landfill once that action plan is completed. Given the extent of the problems, the Virginia Department of Environmental Quality convened an expert panel in early 2022 to assess the actions needed to address the violations at the Landfill and the nuisance conditions Bristol, VA has created by its mismanagement of the Landfill. The expert panel released its report on April 26, 2022 (the “Expert Panel Report”).

After Bristol, VA took no action to implement the Expert Panel Report and did not communicate any intention to comply with it, Bristol, TN filed this action on May 26, 2022 and immediately sought and obtained a Preliminary Injunction ordering Bristol, VA to implement some of the most immediate action items identified in the Expert Panel Report.

In August 2022, Bristol, VA contacted Bristol, TN about the potential for mediation. Contrary to Bristol, VA’s representation, Bristol, TN did respond. Bristol, TN explained in no uncertain terms that mediating the case at that time was futile because, despite the odor problems persisting for years and having the Expert Panel Report for months, Bristol, VA still had not developed an action plan to fully implement the recommendations of the report – and agree to permanent closure of the Landfill – which must serve as the foundation of any resolution. As a result, this lawsuit progressed, including Bristol, VA’s efforts to extend the deadlines in the Preliminary Injunction Order – to which Bristol, VA had previously agreed – and Bristol, VA’s unsuccessful attempt to dismiss Bristol, TN’s public nuisance claim. To be clear, these proceedings – and the corresponding costs to the parties – were caused by Bristol, VA’s failure to comply with the Preliminary Injunction Order and its misguided effort to dismiss one of Bristol, TN’s claims.

At the November 3, 2022 hearing on Bristol, VA's Partial Motion to Dismiss, Bristol, VA's counsel again suggested mediation. Bristol, TN's response was the same: unless Bristol VA was willing to commit to an action plan implementing the Expert Panel Report, a timeline for that action plan, and permanent closure, it was premature to engage in a mediation.

On November 8, 2022, Bristol, VA provided a list of action items and a timeline. The parties engaged in email correspondence through November 14, 2022 about Bristol, VA's plans regarding closure of the Landfill, and Bristol, VA requested that Bristol, TN participate in a mediated settlement conference.

Bristol, TN's counsel responded to Bristol, VA that it would continue to analyze the action plan and discuss the request with its client. On November 17, 2022, Bristol, TN's counsel told Bristol, VA's counsel that a response would be provided after Thanksgiving. On December 12, 2022, Bristol, VA filed its Motion for Mediation.

Since the time the Motion was filed, the parties have discussed the possible resolution of this case and a process for same, including an agreement on reimbursement of damages due to Bristol, VA's conduct and expenses that Bristol, TN has incurred in preparing and prosecuting its claims against Bristol, VA. Those discussions have been productive and are continuing.

Based on the above, Bristol, TN believes it is premature for this Court to grant Bristol, VA's Motion for Mediation. Bristol, TN looks forward to continuing its discussions with Bristol VA, which can progress if Bristol, VA remains committed to formalizing its action plan and the permanent closure of the Landfill. Bristol, TN submits that a mediation may be needed in the future, but it believes that assuming Bristol, VA remains committed on these issues, this case can be resolved promptly without the expense or time associated with a mediation.

December 27, 2022

Respectfully submitted,

/s/ Michael E. Lacy

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