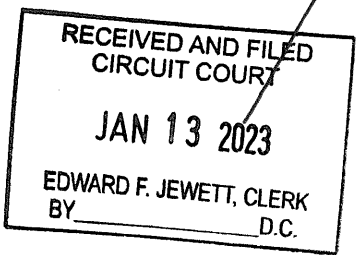


**VIRGINIA:**

**IN THE CIRCUIT COURT OF THE CITY OF RICHMOND**

THE COMMONWEALTH OF VIRGINIA, )  
 )  
 MICHAEL ROLBAND, in his official )  
 capacity as Director of the Department of )  
 Environmental Quality, )  
 )  
 THE VIRGINIA WASTE MANAGEMENT )  
 BOARD, and )  
 )  
 THE VIRGINIA AIR POLLUTION )  
 CONTROL BOARD, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 THE CITY OF BRISTOL, VIRGINIA, )  
 )  
 Serve: Mr. Randall Eads )  
 City Attorney & City Manager )  
 City of Bristol, Virginia )  
 300 Lee Street )  
 Bristol, Virginia 24201 )  
 )  
 Defendant. )

Case No. \_\_\_\_\_



**COMPLAINT**

COME NOW the Plaintiffs the Commonwealth of Virginia, by its Attorney General, Jason S. Miyares (the “Commonwealth”), Michael Rolband, in his official capacity as Director of the Department of Environmental Quality (the “Director”), the Virginia Waste Management Board (the “Waste Board”), and the Virginia Air Pollution Control Board (the “Air Board,” collectively, the “Plaintiffs”) and bring this action against the City of Bristol, Virginia (“Bristol,” the “City,” or the “Defendant”) for its violations of the Commonwealth’s environmental laws and regulations at

the Bristol Integrated Solid Waste Management Facility (the “Facility” or the “Landfill”). Plaintiffs state the following in support of their Complaint:

### **INTRODUCTION**

1. This is a civil action seeking injunctive relief and civil penalties brought pursuant to Va. Code §§ 10.1-1307, 10.1-1307.1, 10.1-1307.2, 10.1-1307.3, 10.1-1309, 10.1-1316, 10.1-1322, 10.1-1402, 10.1-1405, 10.1-1408.1, 10.1-1455 for violations of the Virginia Air Pollution Control Law, Va. Code §§ 10.1-1300, *et seq.*, the Virginia Waste Management Act, Va. Code §§ 10.1-1400, *et seq.*, and the corresponding and applicable permits and regulations, including the Regulations for the Control and Abatement of Air Pollution (“Air Regulations”), 9 VAC 5 chapters 10 through 80, and the Virginia Solid Waste Management Regulations (“Waste Regulations”), 9 VAC 20-81-10 *et seq.* These violations arise from Bristol’s operation of the Facility.

### **PARTIES**

2. The Commonwealth of Virginia is a state and the government of Virginia established by the Constitution of Virginia.

3. The Director of Environmental Quality, Michael Rolband, is the head of the Department of Environmental Quality (“DEQ” or the “Department”) and also the Executive Director of the Waste Board and Executive Director of the Air Board. The Director is vested with the authority to enforce the Virginia Waste Management Act, the Waste Regulations, and the solid waste permits issued under these laws. The Director is also vested with the authority to enforce the Virginia Air Pollution Control Law, the Air Regulations, and the permits issued under these laws.

4. The Virginia Waste Management Board is a body composed of seven members vested with the authority to enforce the Virginia Waste Management Act, the Waste Regulations, and the solid waste permits issued under these laws.

5. The Virginia Air Pollution Control Board is a body composed of seven members vested with the authority to enforce the Virginia Air Pollution Control Law, the Air Regulations, and the permits issued under these laws.

6. The City of Bristol, Virginia is a political subdivision of the Commonwealth. The City Council of the City of Bristol is the governing body of the City, pursuant to the Charter of the City of Bristol. The City and its City Council are “person[s]” within the meaning of Va. Code §§ 10.1-1300 and -1400.

### **FACTS**

#### **A. The Bristol Integrated Solid Waste Management Facility and its Permits**

7. The City owns and operates a municipal solid waste landfill facility known as the Bristol Integrated Solid Waste Management Facility located at 2655 Valley Drive (formerly 2125 Shakesville Road) in Bristol, Virginia.

8. The Facility consists of three landfill units, which are located on contiguous property and separated by landfill haul roads, and includes one landfill gas flare.

9. Under the Virginia Waste Management Act, the General Assembly has delegated authority to DEQ to issue solid waste permits governing the operation of landfills and to enforce compliance with those permits and the associated Waste Regulations.

10. There are three relevant solid waste permits for the Facility.

11. First, on May 24, 1977, the Virginia Department of Health granted Bristol Solid Waste Permit (“SWP”) No. 221 (“SWP 221”). This permit authorized the City to operate the original landfill unit of the Facility (hereinafter “Landfill Unit 221”). SWP 221 allowed for the

on-site disposal of sanitary solid wastes. The Virginia Department of Waste Management terminated SWP 221 on December 1, 1988.

12. Second, on June 24, 1986, the Virginia Department of Health granted Bristol SWP No. 498 (“SWP 498”). This permit authorized the City to operate an additional landfill unit at the Facility (hereinafter “Landfill Unit 498”). SWP 498 allowed for the on-site disposal of municipal solid waste, agricultural waste, demolition waste, construction waste, inert waste, and some certified non-hazardous industrial waste. Upon information and belief, Landfill Unit 498 no longer receives incoming waste. SWP 498 is attached as Exhibit 1 and incorporated herein by reference.

13. Third, on February 13, 1996, DEQ granted Bristol SWP No. 588 (“SWP 588”) under the Virginia Waste Management Act and the Waste Regulations. This permit authorized the City to operate an additional landfill unit (hereinafter “Landfill Unit 588”), which was created through the reclamation of an abandoned mining quarry. SWP 588 allows on-site disposal of municipal solid waste, yard wastes, and some industrial waste generated within the City and surrounding communities, in accordance with the conditions of SWP 588. Upon information and belief, as of September 9, 2022, Landfill Unit 588 no longer receives incoming waste. SWP 588 is attached as Exhibit 2 and incorporated herein by reference.

14. Additionally, the Facility is subject to multiple permits issued by DEQ under authority delegated to DEQ by the United States Environmental Protection Agency pursuant to the Clean Air Act.

15. First, the Facility is subject to a New Source Review Permit (the “NSR Permit”) to construct and operate a municipal solid waste landfill and landfill gas flare. This permit was issued to the City under the State Air Pollution Control Law and Air Regulations on July 7, 2003 and

amended on November 13, 2003, October 13, 2004, and September 30, 2015. The NSR Permit is attached as Exhibit 3 and incorporated herein by reference.

16. Second, the Facility is subject to a Federal Operating Permit to modify and operate three landfill units. This permit was issued to the City on March 13, 2016 (the “2016 Title V Permit”) and renewed on March 13, 2021 (the “2021 Title V Permit”). The 2016 Title V Permit is attached as Exhibit 4 and incorporated herein by reference. The 2021 Title V Permit is attached as Exhibit 5 and incorporated herein by reference.

17. Additionally, the Facility is subject to the requirements of (a) 40 C.F.R. 60 Subpart WWW – Standards of Performance for Municipal Solid Waste Landfills, (b) 40 C.F.R. 63 Subpart AAAA – National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills, (c) 40 C.F.R. 60 Subpart Cf – Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, and (d) Virginia regulations contained within 9 VAC 5.

**B. Violations of the Landfill’s Air Pollution Control Permits and Associated Laws and Regulations**

18. On December 21, 2020, DEQ staff conducted an on-site partial compliance evaluation (“PCE”) of the Facility after receiving multiple odor complaints from local citizens in Bristol, Virginia and Bristol, Tennessee.

19. On January 14, 2021, DEQ staff requested air compliance records for the Facility for further review.

20. On February 1, 2021, DEQ staff conducted a PCE of the compliance and emissions records for the Landfill requested by DEQ. Based on the requested data, the City violated Conditions 13, 14, and 19 of the 2016 Title V Permit, Condition 13 of the NSR Permit, 9 VAC 5-80-1180, 9 VAC 5-50-410, 9 VAC 5-60-100, and 40 C.F.R. 60.758.

21. On February 22, 2021, DEQ issued Notice of Violation (“NOV”) No. ASWRO001691-001 (the “Feb. 22 NOV”) to the City for the violations identified in the preceding paragraph. The Feb. 22 NOV is attached as Exhibit 6 and incorporated herein by reference.

22. Bristol responded in writing to the Feb. 22 NOV on March 4, 2021.

23. On August 9, 2021, DEQ staff conducted a PCE of the 2020 gas well monitoring data for the Facility. Based on that data, Bristol violated Conditions 2(d), (e), (e)(ii), 7, and 11 of the 2016 Title V Permit, Conditions 2(d), (e), (e)(ii), 8, and 12 of the NSR Permit, and 40 C.F.R. 60.753(c), 40 C.F.R. 60.753(g), and 40 C.F.R. 60.755(a)(3) and (5).

24. On August 20, 2021, based on the August 9, 2021 PCE, DEQ issued NOV No. ASWRO001691-002 (“Aug. 20 NOV”) to Bristol for the violations identified in the preceding paragraph. The Aug. 20 NOV is attached as Exhibit 7 and incorporated herein by reference.

25. Bristol responded in writing to the Aug. 20 NOV on August 27, 2021.

26. On August 23, 2021, the United States Environmental Protection Agency issued authorization to the City to operate certain landfill gas wells at higher operating temperatures and to utilize gas treatment alternatives at the Landfill for up to one year.

27. On September 8, 2021, DEQ staff conducted a PCE of the semi-annual reports submitted to DEQ on August 31, 2021. Based on that evaluation of the reports, Bristol violated Conditions 2(d), (e), (e)(ii), 7, 9, and 14 of the 2021 Title V Permit, Conditions 11 and 13 of the 2016 Title V Permit, Conditions 2(d), (e), (e)(ii), 6, 8, and 12 of the NSR Permit, 40 C.F.R. 60.753(c), 40 C.F.R. 60.753(g), 40 C.F.R. 60.755(a)(5), 40 C.F.R. 60.756(a), and 9 VAC 5-80-110.

28. On September 22, 2021, based on the September 8, 2021 PCE, DEQ issued NOV No. ASWRO001691-003 (“Sept. 22 NOV”) to Bristol for the violations identified in the preceding paragraph. The Sept. 22 NOV is attached as Exhibit 8 and incorporated herein by reference.

29. Bristol responded in writing to the Sept. 22 NOV on September 30, 2021.

30. On October 15 and 16, 2021, DEQ received well monitoring data for the Facility from July 2021 to October 2021. DEQ staff conducted a PCE of these records on December 6, 2021. Based on the monitoring data, Bristol violated Conditions 2(d), (e), (e)(ii), 7, and 9 of the 2021 Title V Permit, Conditions 2(d), (e), (e)(ii), 6, and 12 of the NSR Permit, 40 C.F.R. 60.753(b), 40 C.F.R. 60.753(c), 40 C.F.R. 60.756(a), 40 C.F.R. 63.1958(b), 40 C.F.R. 63.1961(a), 40 C.F.R. 60.753(g), 40 C.F.R. 60.755(a)(5), and 9 VAC 5-80-110.

31. On December 10, 2021, based on the December 6, 2021 PCE, the Department issued NOV No. ASWRO001691-004 (“Dec. 10 NOV”) to Bristol for the violations identified in the preceding paragraph. The Dec. 10 NOV is attached as Exhibit 9 and incorporated herein by reference.

32. Bristol responded in writing to the Dec. 10 NOV on December 20, 2021.

33. On March 21-22, 2022, DEQ convened a panel of experts (“Expert Panel”) in Bristol to provide recommendations for addressing odor problems and operational concerns at the Facility. The Expert Panel was charged with evaluating available data and information, including actions over the history of the Landfill, and providing recommendations to address the issues at the Facility. The Expert Panel released its Final Report on April 25, 2022.

34. On May 2, 2022, DEQ staff conducted a PCE of the second half 2021 Title V Semi-Annual Monitoring Report, the second half 2021 New Source Performance Standards WWW Semi-Annual Report, the 2021 Title V Annual Compliance Certification submitted February 28,

2022, and the well temperature data submitted April 13, 2022. The PCE also included review of electronic correspondence received March 4, 2022 regarding gas well #31R temperature readings exceeding 145 °F (62.8 °C) and a statement that corrective action was not implemented within 60 days of the initial temperature reading of 156 °F on December 23, 2021. Based on the submitted data and documentation, the City violated Condition 2 of the 2021 Title V Permit, 40 C.F.R. 63.1958(c)(1), 40 C.F.R. 63.1961(a)(5), 40 C.F.R. 63.1981(j), and 40 C.F.R. 1960(c)(4).

35. On May 3, 2022, based on the May 2, 2022 PCE, DEQ issued NOV No. ASWRO001691-005 (“May 3 NOV”) for the violations identified in the preceding paragraph. The May 3 NOV is attached as Exhibit 10 and incorporated herein by reference.

36. Bristol responded in writing to the May 3 NOV on May 13, 2021.

37. In sum, the City, in operating and maintaining the Facility, has violated Conditions 2, 7, 11, 13, 14, and 19 of the 2016 Title V Permit; Conditions 2, 7, 9, and 14 of the 2021 Title V Permit; Conditions 2, 6, 8, 12, and 13 of the NSR Permit; 40 C.F.R. 60.753(b), (c), and (g); 40 C.F.R. 60.755(a)(3) and (5); 40 C.F.R. 60.756(a); 40 C.F.R. 60.758; 40 C.F.R. 63.1958(b)&(c); 40 C.F.R. 63.1960(c); 40 C.F.R. 63.1961(a); 40 C.F.R. 63.1981(j); 9 VAC 5-50-410; 9 VAC 5-60-100; 9 VAC 5-80-110; and 9 VAC 5-80-1180.

38. These violations continue and the City has failed to return to compliance with the applicable air pollution control permits, laws, and regulations.

**C. Violations of the Solid Waste Permits, the Virginia Waste Management Act, and the Waste Regulations**

39. On April 16, 2021, DEQ staff conducted an on-site compliance evaluation inspection of the Facility. During the inspection, DEQ staff observed that the gradient control pump for Landfill Unit 588 was not functioning properly. Although fugitive gradient water from



Landfill Unit 588 was captured and returned to the sanitary sewer system via a drain in the concrete pad, the pump system was not operating as intended.

40. On May 27, 2021, DEQ issued Warning Letter (WL) No. WL-008-0527-SW (“May 27 Warning Letter”) to the City, citing violations of the Waste Regulations, 9 VAC 20-81-100(B), and the General Conditions of Module 1 of SWP 588. The May 27 Warning Letter is attached as Exhibit 11 and incorporated herein by reference.

41. Bristol responded to the May 27 Warning Letter in writing on June 15, 2021.

42. On November 8, 2021, DEQ staff conducted an on-site meeting with Landfill representatives and observed Landfill operating conditions. During the site visit, DEQ staff observed that both pumps intended to convey leachate and gradient water to the sanitary sewer system were not functioning properly, and the malfunctioning gradient control pump had not been replaced. At the time of the site visit, both leachate and gradient waters were being conveyed to the sanitary sewer system utilizing the 30-horsepower leachate pump.

43. On December 7, 2021, DEQ issued NOV No. NOV-002-1221-SW (“Dec. 7 NOV”) to the City citing the pump issues described in the preceding paragraphs, which violated 9 VAC 20-81-100(B) and SWP 588 Module I, Sections I(B) and I(B)(5). The Dec. 7 NOV is attached as Exhibit 12 and incorporated herein by reference.

44. Bristol responded to the Dec. 7 NOV in writing on December 8, 2021.

45. On March 1, 2022, the City provided verbal notification of an offsite discharge of storm water mixed with leachate from Landfill Unit 498. On the same date, DEQ staff performed an onsite compliance evaluation of Landfill Unit 498. During the compliance evaluation, the City advised that, on February 25, 2022, leachate levels within the pump station reservoir had been observed at higher than normal levels. In order to prevent an overflow of leachate from the pump

station reservoir, Landfill staff closed a valve controlling the flow of storm water runoff from the trench berm to the pump station reservoir. Runoff accumulated in a trench berm containing and transporting runoff from the Facility. On March 1, 2022, Landfill staff observed that runoff from Landfill Unit 498 had filled the trench berm and overflowed the bank towards the pump station. Before it could be contained, the discharge reached storm water Outfall 001, which is permitted to discharge storm water only. An unknown amount of runoff was released offsite.

46. On March 2, 2022, DEQ staff returned to the Landfill to continue the compliance evaluation of Landfill Unit 498. DEQ staff evaluated Landfill compliance with the Waste Regulations and also reviewed documentation provided by the City during the course of the inspection.

47. During the March 2, 2022 compliance evaluation, DEQ staff observed leachate seeps around Landfill Unit 498 just above the trench berm in violation of 9 VAC 20-81-210(F)(2).

48. During the March 2, 2022 compliance evaluation, DEQ staff also observed exposed and uncovered solid waste in the northern and southern portions of Landfill Unit 498 in violation of 9 VAC 20-81-140(B)(1)(c) & (d). Landfill staff indicated landfill mining activities had been idle since the previous DEQ site visit on November 4, 2021.

49. During the March 2, 2022 compliance evaluation, DEQ staff observed areas of shallow ponding on several areas of the southern portion of Landfill Unit 498 in violation of 9 VAC 20-81-140(A)(7) and 9 VAC 20-81-130(H)(3). DEQ Southwest Regional Office staff also observed shallow ponding on portions of the landfill during a November 4, 2021 site visit.

50. During the March 2, 2022 compliance evaluation, DEQ staff reviewed the City's monthly self-inspection records for the Landfill, encompassing the period of March 1, 2021

through March 1, 2022. DEQ staff found a number of aspects of facility operations missing from each monthly inspection record in violation of 9 VAC 20-81-140(A)(16).

51. On March 4, 2022, the City, by a consultant, submitted to DEQ a written report regarding the offsite discharge of storm water mixed with leachate from Landfill Unit 498. The offsite release of leachate violated 9 VAC 20-81-140(A)(6) and 9 VAC 20-81-210(F)(3).

52. On April 25, 2022, DEQ issued NOV No. NOV-003-0422-SW (“April 25 NOV”) to Bristol, citing the violations described in the preceding paragraphs. The April 25 NOV is attached as Exhibit 13 and incorporated herein by reference.

53. Bristol responded to the April 25 NOV in writing on June 2, 2022.

54. The April 16, 2021, November 8, 2021, March 1, 2022, and March 2, 2022 inspections and the correspondence submitted on June 15, 2021, December 8, 2021, March 4, 2022, and June 2, 2022 establish that the City violated SWP 588 Module I, Sections I(B) & I(B)(5), and 9 VAC 20-81-100(B) within Landfill Unit 588; and 9 VAC 20-81-130(H)(3), 9 VAC 20-81-140(A)(6), (7), & (16), 9 VAC 20-81-140(B)(1)(c) & (d), and 9 VAC 20-81-210(F)(2) & (3) within Landfill Unit 498.

55. These violations continue and the City has failed to return to compliance with the applicable solid waste permits, laws, and regulations.

### **COUNTS**

#### **A. Count 1: Violations of the Virginia Waste Management Act, Waste Regulations, and Associated Permits**

56. Plaintiffs reallege and incorporate by reference Paragraphs 1-55.

57. The City’s maintenance and operation of the Facility, as described herein, has violated, and continues to violate, the Virginia Waste Management Act, the Virginia Solid Waste Management Regulations, and the conditions of the associated waste permits regarding the

Facility, as identified herein, including Solid Waste Permit No. 498 and Solid Waste Permit No. 588.

58. Pursuant to Virginia law, including Va. Code § 10.1-1455, Plaintiffs are entitled to injunctive and mandamus relief and Defendant is liable for civil penalties up to \$32,500 per day for each violation.

**B. Count 2: Violations of the Virginia Air Control Law, Air Regulations, and Associated Permits**

59. Plaintiffs reallege and incorporate by reference Paragraphs 1-55.

60. The City's maintenance and operation of the Facility, as described herein, has violated, and continues to violate, the Virginia Air Pollution Control Law, the Regulations for the Control and Abatement of Air Pollution, and the conditions of the associated air pollution control permits regarding the Facility, as identified herein, including the New Source Review Permit, the March 13, 2016 Title V Permit, and the March 13, 2021 Title V Permit.

61. Pursuant to Virginia law, including Va. Code § 10.1-1316, Plaintiffs are entitled to injunctive and mandamus relief and Defendant is liable for civil penalties up to \$32,500 per day for each violation.

**PRAYER FOR RELIEF**

WHEREFORE, the Commonwealth of Virginia, Michael Rolband, in his official capacity as the Director of the Department of Environmental Quality, the Virginia Waste Management Board, and the Virginia Air Pollution Control Board, by counsel, respectfully request that this Court:

- a. Impose upon the City a civil penalty of \$32,500 per day per violation for those violations set forth in this Complaint, from the date each violation commenced until it was or is abated;

- b. Order the City to come into compliance with applicable laws, regulations, and permit conditions;
- c. Issue an injunction limiting the operation of waste disposal at the Landfill until such time as the City comes into compliance with applicable laws, regulations, and permit conditions;
- d. Award Plaintiffs their reasonable attorneys' fees and costs incurred in prosecuting this action;
- e. Retain jurisdiction of this matter until such time that the Court deems that the City has demonstrated its ability to comply with applicable laws, regulations, and permit conditions and does not have any unpaid penalties; and
- f. Grant any other relief that the Court deems appropriate.

Respectfully Submitted,

**THE COMMONWEALTH OF VIRGINIA,  
MICHAEL ROLBAND, THE VIRGINIA  
WASTE MANAGEMENT BOARD, AND  
THE VIRGINIA AIR POLLUTION  
CONTROL BOARD**

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