

Andrea W. Wortzel

D 804.697.1406

F 804.697.1339

andrea.wortzel@troutman.com

February 21, 2023

BY ELECTRONIC MAIL

Mr. Lee Crowell
Virginia Department of Environmental Quality
1111 E. Main Street
Richmond, VA 23219

Re: Draft Consent Decree
Bristol, Virginia Landfills

Dear Mr. Crowell:

I am writing as outside counsel to the City of Bristol, Tennessee to provide comment on the draft Consent Decree relating to Landfill 498 and Landfill 588 (collectively, the Landfills), both of which are owned and operated by Bristol, Virginia. Thank you for the opportunity to provide these comments.

The issues associated with the Landfills have been ongoing for several years. Citizens from both Bristol, Virginia and Bristol, Tennessee have experienced horrible odors during this time, as well as worries and concerns about impacts to their health and wellbeing. Citizens have reported during public meetings that they are experiencing respiratory issues, sleeplessness, nose bleeds, headaches, and stomach aches throughout this time. Public celebrations, events held at community centers, and even school recess have been curtailed periodically due to the stench. These conditions are ongoing.

There is great hope that the actions outlined in the draft consent decree will provide relief. The need for a concrete set of actions, with enforceable deadlines, is obvious. Bristol, Tennessee appreciates the fact that the Commonwealth and the Virginia Department of Environmental Quality ("DEQ") have been able to extract the commitments reflected in the draft Consent Decree from Bristol, Virginia. But the draft Consent Decree does not go far enough. It needs to include a commitment that permanent closure of the Landfills will be timely implemented following completion of the remedial actions. It should also include a requirement for the installation of a continuous air emission monitor at the fenceline of the Landfills, and a requirement that Bristol, Virginia make publicly available all monitoring results and correspondence with DEQ, including the submission of any plans or updates on implementation of the consent decree, by posting this information on its website.

Permanent Closure

While Bristol, Virginia has touted the commitments it makes in the draft Consent Decree, those commitments must be viewed in context. They were only made after the DEQ issued at least 7 notices of violations to Bristol, Virginia regarding its failure to comply with federal and state environmental regulatory requirements (and Bristol, Virginia took no action to address the violations outlined in those NOVs). It was negotiated only after DEQ used Virginia taxpayer dollars to convene an expert panel to determine the actions needed to address those failures. And it was negotiated only after Bristol, Tennessee was compelled to file a lawsuit in federal court following Bristol, Virginia's failure to implement the actions identified by the expert panel. The Commonwealth of Virginia similarly was compelled to file litigation against Bristol, Virginia due to its failure to implement the expert panel recommendations or otherwise address the ongoing violations.

The violations of federal law that have occurred at the Landfills created significant adverse impacts to the citizens of Virginia and Tennessee that live and work in the areas surrounding the Landfills. This is what prompted DEQ to find the situation to be an emergency necessitating expenditure of Virginia resources to address it. The Bristol, Virginia City Manager has himself described the situation as "a monumental disaster." Those adverse impacts are ongoing.

The history surrounding the operation of the Landfills, and Bristol, Virginia's failure to properly fund, staff and maintain the Landfills, demonstrates that the Consent Decree should include a commitment that the Landfills, including the Quarry Landfill, will be permanently closed once the remedial actions outlined in the draft Consent Decree are completed.

There is no confidence that Bristol, Virginia has the capability, personnel, expertise, or financial resources to properly operate and maintain the Quarry Landfill (Landfill 588). Bristol, Virginia has already ceased accepting waste, terminating its contracts for waste disposal. Waste disposal in that region of Virginia has already been reallocated, eliminating the need for the Quarry Landfill to reopen. Nor should Bristol, Virginia be rewarded by being allowed to reopen the Quarry Landfill after creating such an environmental disaster.

Landfill 498 was previously closed, but was allowed to reopen for purposes of mining the waste. There is no need for that Landfill to remain open, and there is no confidence that Bristol, Virginia is properly managing the mining of that Landfill, as evidenced by DEQ's December 22, 2022 Notice of Violation relating to Landfill 498. Accordingly, the Consent Decree should also require the permanent closure of Landfill 498.

The Expert Panel Report acknowledges that the specific details regarding implementation of permanent closure at the Quarry Landfill will not be known until the initial remedial actions are completed and additional data is gathered. Nor are such details necessary to include a provision in the Consent Decree stating that the Landfills will not be reopened or receive any additional waste in the future. Such a commitment is needed to reassure the public that this situation will be permanently addressed and not recreated in the future.

Requiring permanent closure would also be consistent with how Virginia has addressed ongoing violations at other landfills. For example, DEQ ordered the remediation of alleged violations and closure of the Tri-Cities Regional Landfill in 2019. DEQ should require the same here.

Continuous Air Emission Monitor

While the remedial actions are being undertaken, the consent decree should require installation of a continuous air emission monitor, with the data from that monitor available to the public in real time. Such an air emission monitor is necessary to reassure the public that there are no immediate health impacts associated with the emissions from the Landfill while remediation is taking place. DEQ's December 22, 2022 Notice of Violation reveals that there have been methane gases in excess of the lower explosive limit regularly emitted by the Landfills since at least June 2022. Additionally, Bristol, Virginia's gas monitoring reports from December 2022 and January 2023 state that, due to conditions on the ground that create "health and safety concerns," monitoring was unable to be conducted. These ongoing issues create concern among the public that such conditions could have offsite impacts. Installation of continuous air emission monitors at the fence line would help alleviate those concerns.

Posting Monitoring Results and Correspondence with DEQ on Bristol, VA Website

Along the same lines, the Consent Decree should require that the results of all monitoring performed by Bristol, Virginia, as well as all correspondence between Bristol, Virginia and DEQ, should be made publicly available on Bristol, Virginia's website. Bristol, Virginia provides brief updates on its website of actions taken at the Landfill, but these updates are often incomplete and lack the detail necessary for the public to understand the actions that are being taken. As an example, many of the actions specified in the Consent Decree have apparently already occurred. But the public has no way of knowing that those actions have occurred, or the results of those actions, without them being made publicly available (or resorting to a Freedom of Information Act request).

Similarly, as noted above, some of the reports filed by Bristol, Virginia indicate that there have been emission exceedances or conditions that create safety concerns present at the Landfills. Sharing this information in real time would provide reassurance to the public. Such transparency is important, particularly given the long history of avoiding sharing any information and the ongoing concerns about conditions at the Landfills and their impacts on the surrounding community. Providing such information will also save DEQ and Bristol, Virginia the time and expense associated with responding to Freedom of Information Act requests seeking this information, and build a greater sense of trust and cooperation among all of the parties and stakeholders affected by the issues addressed in the Consent Decree.

Conclusion

There is an urgent and ongoing need to remediate the Landfills. This Consent Decree includes many of the actions that are necessary to do so, based on the Expert Panel Report. There are three additional actions that should be included in the Consent Decree:

-
- A specific provision stating that the Landfills will not be reopened or receive any additional waste in the future. They will be permanently closed following implementation of the required remediation action.
 - A requirement to install continuous emission monitors at the fenceline of the Landfills.
 - A requirement that Bristol, Virginia post on its website all monitoring data, sampling, reports and plans submitted to DEQ.

Thank you again for your consideration of these comments. In providing these comments, Bristol, Tennessee does not waive any of its claims or arguments in its action against Bristol, Virginia pending in the federal district court for the Western District of Virginia.

Please let me know if you have any comments or questions.

Sincerely,



Andrea W. Wortzel

AWW:hmn

cc: Ross Phillips, Virginia Office of the Attorney General