



Commonwealth of Virginia

**VIRGINIA COUNCIL ON
ENVIRONMENTAL
JUSTICE**

2022 ANNUAL REPORT

2022 Virginia Council on Environmental Justice

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January 1, 2023

Governor Glenn Youngkin
Office of the Governor
P.O. Box 1475
Richmond, VA 23218

Dear Governor Youngkin,

Over the past year, the Virginia Council on Environmental Justice (VCEJ) has heard from community members across the Commonwealth, environmental experts, agency staff, and advocates regarding issues we are facing.

Virginia has a long way to go. We're proud to provide a place for communities that are disproportionately affected by pollution and climate change to go. We urge you, the Acting Secretary of Natural and Historic Resources, and agency leadership to pay attention to the public comments in the appendix. We must provide the impacted communities with an avenue to address injustice.

We appreciate the opportunity and resources that the Virginia Department of Environmental Quality has made available to us throughout the year but urge you to prioritize support for this body at the same level provided to other boards. This includes subcommittee staff and expense support.

Included in this annual report is a list of recommendations Council members wish to press upon you and your administration to take action, such as by urging you to:

- Stay in the Regional Greenhouse Gas Initiative (RGGI)
- Not repeal the Virginia Clean Economy Act (VCEA)
- Hire an Environmental Justice Director urgently
- Utilize federal investment funding to advance clean energy, building on the VCEA

Thank you,

Taysha DeV Vaughan, VCEJ Chair

Executive Summary

Every Virginian deserves access to a clean and healthy environment. Environmental Justice, as defined in Virginia code, is the fair treatment and meaningful involvement of all people “regardless of race, color, national origin, income, faith, or disability, regarding the development, implementation, or enforcement of any environmental law, regulation, or policy.” Historically, communities of color and low-income areas have disproportionately been affected by pollution from energy, industrial, and agricultural development. The impacts of climate change compound these burdens further for our most vulnerable populations.

The Virginia Council on Environmental Justice (VCEJ) (“the Council”) is honored to provide a space for communities across the commonwealth to address these environmental inequities. Further, the Council is honored to present Governor Youngkin and members of the Virginia General Assembly with recommendations that seek to improve the public and environmental health. A few selected recommendations are included below. All recommendations are expanded upon on pages 21-25, of the full report.

- 1. Keep Virginia a member and active participant of the Regional Greenhouse Gas Initiative (RGGI)** and continue to allocate revenue generated from the program as written in the Clean Energy and Community Flood Preparedness Act of 2020.
- 2. Do not repeal the Virginia Clean Economy Act (VCEA).**
- 3. Fill the vacant Environmental Justice Director role** at the Department of Environmental Quality urgently.
- 4. Utilize federal investment funding**, building on the VCEA, to advance clean energy, jobs, and justice.
- Virginia must **prioritize and consider cumulative impacts in environmental justice in environmental laws**, regulations, and policy decisions per code, and keep the Council as well as the public abreast of the permitting actions.
- 6. Build a clean and equitable energy system** with policies and actions that prioritizes clean energy sources, alleviates the economic burden for energy costs to low-and moderate-income consumers and creates opportunities and incentives for communities across the Commonwealth to take part in the clean energy economy.
- 7. Prioritize, support and fund public participation** measures that create more access for all Virginians across the Commonwealth and take advantage of modern and available communication technologies.
- 8. Center equity in state agency efforts to address water infrastructure, safety and resilience**; capitalizing on federal funds and encouraging locality led efforts prioritize serving low-income and marginalized communities.
- 9. Create an office of Just and Equitable Clean Energy Transition** to steward an equitable and just transition in communities negatively impacted by the downturn in the coal economy, developing incentives and workforce development programs for opportunities in the clean energy economy.
- 10. Address opportunity to modernize Virginia’s transportation systems and its inequities**, by creating a **Virginia Clean Active Accessible Transportation Task Force** of diverse stakeholders and communities most impacted by transportation inequity to study, design and

create mobility management strategies.

- 11. Centralize and unify state efforts on mapping tools as well as standards for public participation** to ensure ample notice time, increase access to public meetings, and developing policies across all agencies with guidance around outreach to under-served communities, and streamlining public notice timelines.
- 12. Leverage funds from federal funds and initiatives** like the Inflation Reduction Act (IRA), Justice40 and the Infrastructure Investment and Jobs Act (IIJA) to empower communities across the Commonwealth to build capacity building for historically and economically disadvantaged communities; and provide strong foundational education in topics relevant to the environment and public health, and how various levels of governmental decisions affect both.
- 13. Provide staff and resources to support sovereign Tribal Nations and Indigenous populations** and allow grant access to state and federally recognized tribes to receive funds from the Virginia Land Conservation Foundation.

Among additional chief concerns discussed by the Council this year were comments to the Virginia Department of Transportation (VDOT) focused on environmental justice stakeholder engagement for National Environmental Policy Act (NEPA) review of transportation projects (Appendix A) and the Virginia Energy Plan. Appendix B details the public comments that were received by the council.

Background

After passing through the General Assembly, the Virginia Council on Environmental Justice (VCEJ) was signed into law in March 2020. The VCEJ is a body of diverse citizens with climate and environmental backgrounds concerned for their marginalized neighbors, many of whom are vulnerable to disproportionate impacts from pollution and environmental hazards in poor and minority communities, as well as protecting Virginia's air, water, and soil. Recommending ways for reducing carbon and other greenhouse gas emissions and achieving environmental justice for communities are central to our mission. As a codified Advisory Board, we have heard and responded to environmental justice concerns from Virginians from across the state and have learned how critical our work has been for various communities seeking information.

The 2020 Environmental Justice Act codified promoting environmental justice as the policy of the Commonwealth, making it imperative for all state agencies to consider environmental justice and fence-line communities when making decisions.¹ One major goal of the Council on Environmental Justice is increasing public engagement from environmental justice communities across the Commonwealth to facilitate the goals of the Environmental Justice Act. Historically, environmental justice communities have been left out of important decision-making conversations regarding projects that could affect the air, water, and livelihoods of community members. To achieve equitable public engagement on issues of environmental justice from the communities most at risk, there must be meaningful involvement of environmental justice communities before, during, and after the decision-making process is complete. The members of the Council, especially the Emerging Issues Subcommittee, have worked to provide a space for community members to have their voices heard in a public forum and incorporated into the Council's recommendations. Members of the Emerging Issues Subcommittee have also visited impacted communities to hear from them first-hand.

Definitions of many terms used above and throughout the report can vary; however, for the terms below, the Council refers to the definitions listed in Article 12 of the Code of Virginia, The Environmental Justice Act.

- "Community of color" means any geographically distinct area where the population of color, expressed as a percentage of the total population of such area, is higher than the population of color in the Commonwealth expressed as a percentage of the total population of the Commonwealth. However, if a community of color is composed primarily of one of the groups listed in the definition of "population of color," the percentage population of such group in the Commonwealth shall be used instead of the percentage population of color in the Commonwealth.²
- "Environment" means the natural, cultural, social, economic, and political assets or components of a community.³

¹ See Code of Virginia, Article 12. Virginia Environmental Justice Act. § 2.2-235. Policy regarding environmental justice.

² See Code of Virginia, Article 12. Virginia Environmental Justice Act. § 2.2-234. Definitions

³ See Code of Virginia, Article 12. Virginia Environmental Justice Act. § 2.2-234. Definitions

- "Environmental justice" means the fair treatment and meaningful involvement of every person, regardless of race, color, national origin, income, faith, or disability, regarding the development, implementation, or enforcement of any environmental law, regulation, or policy.⁴
- "Environmental justice community" means any low-income community or community of color.⁵
- "Fair treatment" means the equitable consideration of all people whereby no group of people bears a disproportionate share of any negative environmental consequence resulting from an industrial, governmental, or commercial operation, program, or policy.⁶
- "Fenceline community" means an area that contains all or part of a low-income community or community of color and that presents an increased health risk to its residents due to its proximity to a major source of pollution.⁷
- "Low income" means having an annual household income equal to or less than the greater of (i) an amount equal to 80 percent of the median income of the area in which the household is located, as reported by the Department of Housing and Urban Development, and (ii) 200 percent of the Federal Poverty Level.
- "Low-income community" means any census block group in which 30 percent or more of the population is composed of people with low income.
- "Meaningful involvement" means the requirements that (i) affected and vulnerable community residents have access and opportunities to participate in the full cycle of the decision-making process about a proposed activity that will affect their environment or health and (ii) decision makers will seek out and consider such participation, allowing the views and perspectives of community residents to shape and influence the decision.
- "Population of color" means a population of individuals who identify as belonging to one or more of the following groups: Black, African American, Asian, Pacific Islander, Native American, other non-white race, mixed race, Hispanic, Latino, or linguistically isolated.
- "State agency" means any agency, authority, institution, board, bureau, commission, council, or instrumentality of state government in the executive branch of government.

⁴ See Code of Virginia, Article 12. Virginia Environmental Justice Act. § 2.2-234. Definitions

⁵ See Code of Virginia, Article 12. Virginia Environmental Justice Act. § 2.2-234. Definitions

⁶ See Code of Virginia, Article 12. Virginia Environmental Justice Act. § 2.2-234. Definitions

⁷ See Code of Virginia, Article 12. Virginia Environmental Justice Act. § 2.2-234. Definitions

2022 Meetings & Council Actions

The Virginia Council on Environmental Justice met for five full council meetings in 2022. Three meetings were held in Richmond, and one in Virginia Beach. Minutes for the March 17, May 12, July 20, September 13, and November 15 meetings can be found on the Virginia Council on Environmental Justice page of the Acting Secretary of Natural and Historic Resources website.⁸ Council members served on an Emerging Issues Subcommittee, an Infrastructure and Just Transition Subcommittee and a Report Subcommittee.

Among chief concerns discussed by the council were comments to the Virginia Department of Transportation (VDOT) focused on environmental justice stakeholder engagement for National Environmental Policy Act (NEPA) review of transportation projects (Appendix A) and the Virginia Energy Plan. During each Council meeting, there was an hour reserved for public comment. Appendix B details the public comments that were received by the council.

The Council was grateful to receive staff support from the Department of Environmental Quality (DEQ). DEQ staff was able to provide assistance with scheduling and meeting logistics throughout the year. As outlined in Virginia Code, the Secretary of Natural and Historic Resources, in the Governor's office, shall provide support to the Council. In addition, "all agencies of the Commonwealth shall provide assistance to the Council, upon request".⁹ The Council currently needs additional support to assist in tasks such as staffing subcommittee meetings.

The work of the council is consistent with Governor Youngkin's own acknowledgment that "too many of our citizens have not received the equal opportunity they deserve, and we recognize that diversity when genuinely embraced strengthens our Commonwealth. Every Virginian deserves dignity and respect, deserves the opportunity to pursue their dreams and deserves inclusion in the Virginia family".¹⁰

⁸ <https://www.naturalresources.virginia.gov/initiatives/environmental-justice/>

⁹ See Code of Virginia, § 2.2-2699.11. Compensation; expenses; staffing.

¹⁰ Governor of Virginia, Glenn Youngkin, accessed November 6, 2022, from <https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/74---eo/74---eo/EO-10--Focusing-Virginia's-Diversity,-Equity,-and-Inclusion->

DEQ Permit Tracking

At the August 29 Emerging Issues subcommittee meeting we discussed several recommendations designed to improve the ability of the state of Virginia to include environmental justice in the process of permitting. These recommendations flowed from discussions with many environmental justice communities. These recommendations will, we hope, be taken into consideration by the Virginia Department of Environmental Quality (DEQ) and other agencies involved in permitting in the state. They are consistent with values expressed by our Governor.

The work of the council is consistent with the acknowledgment of Governor Youngkin that “too many of our citizens have not received the equal opportunity they deserve, and we recognize that diversity when genuinely embraced strengthens our Commonwealth. Every Virginian deserves dignity and respect, deserves the opportunity to pursue their dreams and deserves inclusion in the Virginia family”.¹¹

Permitting Recommendations

1. Virginia Department of Economic Development should make presentations to the EJ Council when new projects are being proposed or considered that could be sited in EJ communities.
2. The Department of Environmental Quality and other permitting agencies should brief the Council when permits are being proposed or considered that could impact EJ communities.
3. The Department of Environmental Quality and other permitting agencies should consider what existing facilities, businesses, municipal, transportation or industrial land uses are close to a proposed permitting operation and include the cumulative impact of those facilities in making permitting decisions and reviewing the environmental justice implications of its’ decision-making process. These agencies should also consider data on water and air quality in EJ communities as part of the impact evaluation as they make permitting decisions.
4. The Department of Environmental Quality, the Department of Agriculture and other relevant agencies should detail for the Council their process for considering environmental justice in its permitting process.

¹¹ Governor of Virginia, Glenn Youngkin, accessed November 6, 2022, from <https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/74---eo/74---eo/EO-10--Focusing-Virginia's-Diversity,-Equity,-and-Inclusion->

Virginia Energy Plan

The VCEJ Infrastructure and Just Transition Subcommittee had the opportunity to review Governor Youngkin's Virginia Energy Plan. We agree with the objectives set out in the Virginia Energy Plan, which include ensuring reliability, affordability, innovation, competition, and environmental stewardship. However, these objectives are already achievable through the framework enacted in the VCEA. Additionally, it is worrisome that the entire Virginia Energy Plan does not mention the impact of climate change a single time.

Governor Youngkin's plan relies on increasing nuclear energy use through launching a commercial small nuclear reactor in Southwest Virginia. However, this technology has not yet been established as a commercially viable energy source and recent studies have suggested this technology generates a higher volume of radioactive waste than conventional nuclear plants leading to increased hazards and burdens for nearby communities.

While major businesses in the Commonwealth continue to seek sources of renewable power, the Virginia Energy Plan doubles down on fossil fuel infrastructure, which has imposed disproportionate environmental and public health burdens to Historically Economically Disadvantaged Communities (HEDCs).

Additionally, we are concerned that the Virginia Energy Plan offers no strategy to reduce emissions from the transportation sector— the largest source of carbon emissions in the Commonwealth— other than opposing Advanced Clean Car Standards. This omission may result in the Commonwealth missing new federal funds made available under the Bipartisan Infrastructure Law and Inflation Reduction Act to help reduce transportation emissions, build out more vehicle electrification infrastructure, and promote greater equity in transportation.

Finally, we are concerned about the Governor's opposition to Virginia's participation in the RGGI, which provides critical funds to strengthen Virginia's resilience to flooding and helps reduce electric bills through promoting energy efficiency. We are aware of a number of legislative recommendations from the Virginia Energy Plan but have not fully reviewed their impact. We hope that Governor Youngkin will work constructively with the General Assembly in the upcoming session to implement the VCEA law in an efficient, transparent, and equitable manner.

The Subcommittee continues to provide Virginia Energy with input on the HEDC report mandated by the General Assembly. Most of that work is relating to mapping of HEDC communities as defined under the VCEA to create a baseline to conduct future analysis on the impact on energy rates or emissions reductions.

Emerging Issues from Communities

The following sections of the Emerging Issues subcommittee report are organized by EJ community. These include communities who have testified at a meeting of the Advisory Council (Appendix C) or who have been the subject of formal or informal site visits by subcommittee members. The committee has not had an opportunity to complete a thorough review or to collect all desired information from all communities. To the extent that we were able, the following sections are organized in the following manner:

1. Community
2. Issues
3. Community Perspective
4. Principle Contact
5. Relevant Agencies Involved
6. Community Recommendations

Emerging issue spotlights concerning the maritime heritage communities in Suffolk and Chesapeake, the Brown Grove Wegmans distribution center, Radford Army Ammunition plant, southwest coal communities and the Bristol landfill are contained below.

A. Maritime Heritage Communities in Suffolk and Chesapeake

Community

This link was provided for background information on the community.¹²

Community Demographics

Table 1: Populations of Color

Geographic Areas	Maritime Heritage Communities	Total Population	Not Hispanic or Latino						Hispanic or Latino
			Black or African American	American Indian and Alaska Native	Asian	Native Hawaiian and Other Pacific Islander	Some other race	Two or more races	
Virginia	-	8,509,358	19%	0%	7%	0%	0%	3%	10%
City of Suffolk	-	91,383	41%	0%	2%	0%	0%	3%	4%
Block Group 753.011	Crittenden, Eclipse	798	5%	0%	1%	0%	0%	3%	2%
Block Group 753.012	Hobson	551	18%	0%	0%	0%	0%	2%	5%
Block Group 753.013	Hobson	820	32%	0%	0%	0%	0%	3%	4%

Data from US Census ACS 5YR Estimates Detail Table B03002

Red cells indicate values that meet the definition for an EJ Community under VEJA.

Yellow cells indicate values that are within 1% of the VEJA threshold, and therefore, borderline.

Issues

- Identified Hobson Village Meeting Action Items Summary:
 - Sewage Handling and Disposal Regulations are going to be up for review soon
 - Communities being connected to City of Suffolk sewage system
 - Flooding on local streets
 - Mosquito Control

¹² <https://www.dhr.virginia.gov/historic-registers/133-5257/>

- Roadway lack of speed limit signs
- Changing the designation of Crittenden Road from an arterial road
- Investigating whether an underground storage tank exists under the old service station
- Need for sidewalks
- Project 460:
 - Project was shot down years ago because of environmental concerns, people on wells nearby, don't want water quality or air quality to be impacted. Major rezoning request to rezone from agricultural to heavy industrial. Port trying to expand more into heavy industrial in Suffolk.
- Continually have projects presented that the public knows nothing about. Difficulty attending due to location
- Historical resources concerns – Suffolk does not have capacity to notate historic places so unfortunately, they are noted as “nothing”
- Civic leagues are joining together. Any effort by the Council is appreciated.

Principal Contacts:

- Mary Hill, President of the Hobson Artesian Well Association and Resident of Hobson Village
- Kelly Hengler, President of the CE&H Heritage Civic League

Relevant Agencies/Entities

- Department of Environmental Quality (responsible for administering laws related to air quality, water quality, water supply, renewable energy and land protection)
- Virginia Department of Health (have been contacted regarding smells from waste)
- Virginia Department of Transportation (responsible for road signage, safety, maintenance)
- Virginia Department of Historic Resources (received request to declare certain areas as historic)
- Peanut Soil and Water Conservation District (conserving natural resources on agricultural lands)
- City of Suffolk – Public Works Representative (involved in connecting residents to city sewage)
- US EPA (conducted workshops on environmental justice)

B. Brown Grove Wegmans Distribution Center

Community

Brown Grove located in Hanover County, 140 family homes. See Appendices C and D for additional information.

Issues: This community has submitted their site-specific evidence of potential harms to health, their heritage land values, their historic uses of their land and churches, family burial sites at every possible permit opportunity. First, with the Army Corps of Engineers wetlands permit, then with the Virginia Dept. of Environmental Quality for a Wegman's wetlands and water pollution control

permit. These permit processes did not acknowledge in permit processes the primary evidence given by the people that know the site best. No baseline air or water testing was done before these permits were granted.

Community Perspective:

The community feels that an independent Environmental Justice study is needed to accomplish the following:

1. Mapping existing sources of toxic pollution: Rt. 95 corridor, truck stop, concrete manufacturing facility, landfill for their exact sizes on the landscape -- to map existing cumulative toxic pollution sources already impacting the community sited for more.
2. Conducting baseline air monitoring at perimeter points of each site:
 - a. concrete manufacturing emits CO2 - 8% of worldwide emissions, and "concrete dust" seen in visible clouds in Brown Grove contain crystalline silica, which causes respiratory issues including silicosis.
 - b. landfill - (we need to identify the airborne emissions to monitor)
 - c. Rt. 95 & Truck stop (idling diesel tractor trailers): PM2.5
 - d. regional airport: aviation gas contains lead, take offs and landings greatest sources of harmful pollution to residents nearby - air monitoring at perimeters (well researched in general, but not this specific site).
3. Conducting baseline water testing at water wells before new sources of pollution and contamination are introduced.
4. Research related to the impacts of the planned operations of all new sources of toxic pollution from air emissions, wetlands impacts on community water wells, sedimentary and erosion impacts of clear-cutting all trees for hardscape; air emissions; and uses of their land for their economic and life purposes; impacts on a historic district:
*Wegman's diesel truck traffic (4,800 vehicle trips per day, 24/7 365 days of the year + 1,400 employee car trips a day)

Principle Contact:

- Renada Harris

Relevant Agencies Involved and How They are Involved

- Virginia Department of Historic Resources (documenting historic markers and cemeteries, approved historic district)
- US Environmental Protection Agency (collaborating with community on EJ)

Community Recommendations:

Representatives from the Brown Grove community recommend that:

1. Wegman's should construct a sidewalk on the outskirts of their property, which will enable the community to walk around the facility more safely.
2. Crosswalks be added by the county.
3. Wegman's should also consider parks and other areas where the community could potentially benefit.

- Ideally, some of these land uses should never have been placed in Brown Grove, but since they are there these facilities should consider adding some things which will benefit the community, which will make the situation slightly better for Brown Grove residents.

C. Radford Arsenal

Community

The Radford Army Ammunition Plant (RAAP) is located near Radford, Virginia in the southwest portion of the state. Radford is home to Radford University. It is also close to the town of Blacksburg and lies along the New River. The town of Radford has a population of approximately 18,000 residents. The plant has historically been the site of open burning of discarded munitions.¹³ The plant recently received a ten-year renewal of a permit from DEQ which will allow it to continue to burn waste.

Issues

Community members raised the issue of air pollution with specific concerns about lead, arsenic and cadmium. They are concerned that the older incinerators in use on the plant may be using outdated technology but are continuing to be permitted for operation. Concerns were also raised about contamination of the New River with polychlorinated biphenyls (PCBs) and possible groundwater contamination. The city of Radford draws its drinking water from the New River.

Community members report that they are seeing more cancer in Radford and that asthma rates are higher than in the state as a whole.

Community members report that the hearings and public comment for the permitting process that occurred recently was conducted without broad community knowledge or involvement.

Community Perspective

Community members are requesting that the older incinerators be shut down. They also would like an independent evaluation of the operation of the plant to ensure they are adhering to state and federal guidelines. They are requesting a cumulative impact assessment. They are also requesting a community health assessment.

Principal Contact:

- Alyssa Carpenter, Citizens for Arsenal Accountability

Relevant Agencies Involved and How They are Involved

- Virginia Department of Environmental Quality (conducted recent hazardous waste permitting process; issued renewal of permit to burn munitions at RAAP)
- US Environmental Protection Agency (cited the plant for violations of the Clean Air and Clean Water Act)
- US Department of Defense (operates the plant)

Community Recommendations:

Representatives from the community surrounding the Radford Arsenal recommend that:

¹³ https://earthjustice.org/sites/default/files/files/open_burn_9-19-22.pdf

1. Virginia agencies involved in the permitting process should improve communications with residents of Radford, Blacksburg, and other residential communities near the plant.
2. Community member requests for third party cumulative risk assessment are considered.

D. Southwest Coal Communities

Community

Southwest Virginia Coal Communities of Buchanan (2020 census population 20,355), Dickenson (population 14,124), and Wise Counties (population 35,647)
See Appendices E, F, G, and H for additional information.

Issues

- Continued decline of coalmining jobs;
- Enduring environmental degradation fallout and coal company bankruptcies leading to avoidance of environmental cleanup;
- Proposed nuclear reactor, nation's first small modular reactor, or SMR, in Wise County

Community Perspective

In October 2022, Governor Youngkin and a select group of politicians and businessmen, not including community organizations, visited Wise County to make the announcement about the SMR. Community members and other stakeholders were not informed about the announcement nor were asked to contribute comments.

Principal Contacts:

- Rebecca Shelton, Director of Policy & Organizing of the Appalachian Citizens' Law Center
- Sharon Fisher, President of The Clinch Coalition
- Adam Wells of Appalachian Voices
- Terran Young, president of Southern Appalachian Mountain Stewards

Relevant Agencies Involved and How They are Involved

- US Nuclear Regulatory Commission (approved the design for the SMR; will have to approve licenses)
- State Corporation Commission (would be involved in the approval process)
- Virginia Department of Environmental Quality (Would be involved in issuing permits for the facility)

Community Recommendations:

Representatives from SW coal communities recommend that Governor Youngkin and his administration should seek the input of community members and community organizations where the proposed SMR is slated to be constructed and installed. As noted above, this would be the first SMR in the nation.

E. Bristol City Landfill

Community

The Radford Army Ammunition Plant (RAAP) is located near Radford, Virginia in the southwest portion of the state. Radford is home to Radford University. It is also close to the town of Blacksburg and lies along the New River. The town of Radford has a population of approximately 18,000 residents. The plant has historically been the site of open burning of discarded munitions. The plant recently received a ten-year renewal of a permit from DEQ which will allow it to continue to burn waste. See Appendices I, J, K, and L for additional information.

Issues

In October 2021, Virginia Environmental Justice Council members visited the far southwest portion of our state. This was a long-delayed visit due to COVID-19 and the issuance of Executive Order Fifty-Three.

On the morning of October 25th, the council held a hybrid meeting at UVA Wise County and heard public comments from The Clinch Coalition, Appalachian Voices, Bristol Area Ministers Alliance, and the Virginia Department of Environmental Quality. Later that evening, we attended a town hall with members from Big Stone Gap, hearing from representatives of the New Economy Network and Big Stone Gap council members.

On October 26th, council members visited Bristol City, where we met with faith leaders and learned about their concerns with air quality and toxic fumes from the city-run quarry landfill. We found the community suffering from daily inundation of fumes and odors from the landfill. The landfill was established in the late 1990s and became a public nuisance shortly thereafter.

In 2020, shortly after the peak of the COVID-19 crisis, the fumes from the landfill began to waif into Bristol, Tennessee's air space. Many parents complained that their children were experiencing nose bleeds, nausea, and chronic respiratory problems, among other reactions to the air quality. Many found it unbearable to stay in their homes, especially at night. Sleep deprivation from the nightly odors became a complaint of many. The members participated in a brief tour of the area and heard concerns from faith leaders and others about the landfill.

Since that initial meeting with Bristol members, the Virginia Department of Environmental Quality convened an expert panel to determine the best solutions for the problem.¹⁴ The expert panel report outlined the following action items:

- Test and construct a sidewall odor mitigation system around the Landfill perimeter that will be designed and constructed to mitigate landfill gases emanating from the Landfill/quarry sidewalls.
- Improve the performance of existing gas extraction wells, including minimizing air intrusion pathways through landfill cover.
- Address any air intrusion caused by well over-drawing from the landfill.
- Weekly monitoring activities of gas emissions at the landfill surface.

¹⁴ <https://www.deq.virginia.gov/home/showpublisheddocument/14196/637865007723100000>

- Identify and eliminate to the extent practical any landfill gas fugitive emissions at the Landfill surface.
- Install settlement plates.
- Conduct monthly topographic surveys to document the locations and rates of settlement in the waste mass.
- Strongly consider cessation of waste disposal operations at the landfill.
- Install and monitor a dedicated system of thermocouples in the waste mass to monitor landfill temperatures (above and within the water-saturated waste) for greater spatial resolution (horizontal and vertical) and to provide data at a greater frequency.
- Install additional gas extraction wells to reduce emissions and temperatures.
- Install at least five (5) deep, dedicated monitoring wells to enable sampling and characterization of leachate and measurement of temperature profiles in the waste. It should include multi screens at several depths.
- Install and operate large-diameter dual-phase extraction wells to remove gas and leachate.
- Install a temporary geosynthetic cover over the entire landfill.
- Direct runoff to the southeast corner of the landfill where it is expected a stormwater management pond can be constructed to manage stormwater that is collected on top of the geomembrane cover.
- Develop and implement an effective and sustainable stormwater management plan and settlement management plan for the landfill.
- Perform frequent testing of clean stormwater being discharged offsite to ensure no contamination has occurred.
- The Panel recommended an active community outreach program to communicate strategies, provide status and progress reports, and receive citizen feedback.
- Develop a long-term plan to monitor landfill conditions, repair and replace equipment, construct a landfill cap, and maintain the gas and leachate collection systems.

There has been some positive movement related to landfill. On September 9, 2022, the Bristol City Landfill stopped taking in waste. While some movement has occurred to address some of the more technical recommendations in general the city is behind on the timelines and has not fully completed any of the recommendations with the exception of ceasing to accept waste. However, they have not committed to permanently closing the landfill and do not yet have resources to fully close or continue operations safely. Most disturbing to the residents is that the city nor DEQ have fully implemented the recommendations for transparency and to introduce active community outreach to communicate their strategies and provide progress reports.

In addition, the City of Bristol, Tennessee filed federal lawsuit against the City of Bristol, Virginia. Bristol City Council later entered into negotiations with DEQ for a consent order, but the case has been referred to the Attorney General's office in late October.

Community Perspective

Members of both BAMA and H.O.P.E. who represent community members on both sides of Bristol, have expressed deep concern and frustration with the lack of transparency and communications from either Bristol City authorities or from Virginia Department of Environmental Quality. The city residents remain concerned about transparency, community outreach, and mitigation efforts during the implementation of the expert panel's recommendations.

Principal Contact:

- Rev. Jackie Nolpin
- Rev. Dr. Sam Weddington, Bristol Area Ministers Alliance (BAMA)
- Rebecca Everdon, Hope for Bristol (H.O.P.E.)

Relevant Agencies Involved and How They are Involved

- City of Bristol, Tennessee (filed federal lawsuit against the City of Bristol, Virginia.)
- Bristol City Council (entered negotiations with Virginia Department of Environmental Quality for a consent order but the case has been referred to the Attorney General's office in late October)
- Virginia Department of Environmental Quality (convened an expert panel to make recommendations about the landfill)

Community Recommendations:

The community members recommended that a public meeting be scheduled with area residents to update them on progress and strategies for the Bristol City Landfill. Another concern is related to mitigation for residents living closest and or in the path of the fumes emanating from the landfill. BAMA, area faith communities, and others have exhausted their resources purchasing air purifiers and filters for residents and providing funding for residents to get away from the daily suffering for an evening or two in hotels outside the area. Weatherization of older stock homes is a viable option to help prevent fumes and odors from entering homes freely. The community also recommends support for finding additional resources to address these concerns.

Finally, the permanent capping and closure of the landfill is expected to be in the several millions of dollars. The City of Bristol, Virginia will need state and federal support to complete the process. The community recommends that the Governor's office work with the General Assembly budget process to support the city and its efforts.

Conclusion

The VCEJ hopes the information and recommendations presented in this report will be helpful to the governor's administration, state agencies and the General Assembly in charting a pathway towards ensuring that Virginia becomes a more equitable state and that all Virginians gain access to a clean, healthy and prosperous environment. The next section below details a summary of the top recommendations from council discussions followed by the VCEJ 2022 comprehensive recommendations list.

Recommendations Summary

1. The Commonwealth **should remain a member of the Regional Greenhouse Gas Initiative (RGGI) and implement the Virginia Clean Economy Act (VCEA)**. The Commonwealth should continue to build its clean energy economy, prioritizing clean energy sources such as offshore wind and solar, with a focus on energy efficiency, transportation pollution solutions and equitable transition practices.
2. The Commonwealth should **make the permitting process more equitable** by following the 2022 permit recommendations submitted to the Department of Environmental Quality by the Council (See page 9).
3. Virginia should **increase environmental justice stakeholder engagement** during the National Environmental Policy Act (NEPA) review of transportation projects (Appendix A) and should consider the same for all stakeholder engagement processes.
4. Virginia should **leverage funds from federal initiatives** stemming from the Inflation Reduction Act (IRA), the Justice40 Initiative, and the Infrastructure Investment and Jobs Act (IIJA) as well as federal tools like the Climate and Economic Justice Screening Tool (CEJST) to empower environmental justice communities across the Commonwealth.
5. While this year's staff support from DEQ has been vital and is appreciated, per the Code of Virginia § 2.2-2699.11, the Office of the Governor and the Secretary of Natural and Historic Resources is obligated to staff and provide a budget and resources for the Virginia Council on Environmental Justice. **The Office of the Governor and Secretary of Natural and Historic Resources should provide support to the VCEJ at the same level as other statutory boards** because DEQ has limited resources. Budget and resources to allow for additional site visits to communities, travel for community members to present and give comments to the council, additional subcommittee meetings, and virtual/hybrid meetings would be appreciated.
6. Virginia **must prioritize and consider cumulative impacts in environmental justice** in environmental laws, regulations, and policy decisions per code.

2022 List of All VCEJ Recommendations

1. A Clean and Equitable Energy System

- The Council recommends continued and active participation in the Regional Greenhouse Gas Initiative (RGGI) and that the allocations for the revenue generated from the program remain the same as written in the Clean Energy and Community Flood Preparedness Act of 2020.
- Implement the VCEA, utilizing federal investment funding, to advance clean energy, jobs, and justice.
- Several policies and actions should be adopted that would lead to a cleaner power generation while alleviating the economic burden for those energy costs and creating new opportunities for more communities to benefit in the clean energy economy. A helpful tool is the Energy Justice Scorecard developed by the Initiative for Energy Justice.¹⁵
- The General Assembly should support distributed solar through incentives such as tax credits, rebates, or low-interest loans; remove barriers that limit customers' access to distributed solar; allow local governments to use electricity from a solar project on one property to serve buildings on nearby properties; and implement specific programs to expand access to distributed energy for low- and moderate-income customers.
- Policymakers should reject any changes to the net metering compensation structure, unless those changes, at a minimum grandfather all existing net-metering customers, mandate that any changes to net metering do not take effect for at least five years, and ensure the economic incentives are as good as or better for customers than the current net metering system.
- The governor should propose, and the General Assembly should appropriate \$30 million to the Low-to-Moderate Income Solar Loan and Rebate Fund keeping in line with the Clean Energy Advisory Board.
- The General Assembly can help to increase state funding for research, development, demonstration, and pilot projects for energy storage technologies and stand-up consumer energy storage education programs.
- The administration and the General Assembly should give the State Corporation Commission the authority to reign in the costs of offshore wind and strengthen guidelines for local workforce recruitment from communities of color in the Hampton Roads region to build wind turbines.

2. Public Participation

- The Council recommends additional resources to support the Council's work. Per the Code of Virginia § 2.2-2699.11, the Office of the Governor and the Secretary of Natural and Historic Resources is obligated to staff and provide a budget and resources for the Virginia Council on Environmental Justice. The Office of the Governor and Secretary of Natural and Historic Resources should provide support to the VCEJ at the same level as other statutory boards because DEQ has limited resources. Budget and resources to allow for additional site visits to communities, travel for community members to present and give comments to the council, additional subcommittee meetings, and virtual/hybrid meetings would be appreciated.

¹⁵ <https://iejusa.org/scorecard/>

- Fill the vacant Environmental Justice Director role at the Department of Environmental Quality urgently.
- Regarding the Administrative Process Act, the Council recommends that § 2.2-4012 be amended to include “meaningful involvement” as a purpose of the regulatory process.
- Introduce a budget amendment to fund technology and personnel enhancements to ensure there can be a hybrid option at public hearings.
- Conduct public hearings in the closest feasible location to the site of the proposed project.
- Prioritize publicly owned spaces for hearings and events.
- Develop guidance on using a respectful approach to security during public hearings. It is essential this guidance is developed in collaboration with communities of color, and with acknowledgment of the historical and ongoing trauma of disproportionate police violence against communities of color.
- Align inter-agency public notice and comment period lengths, ensure ample notice time for permits or agency actions, and develop policies across all agencies with similar guidance around outreach to under-served communities.
- Allocate funds and budget for community outreach and communications for agencies to proactively notify and engage with affected communities on decisions, early in the process.

3. Planning and Public Participation around Mapping Tools

- The Commonwealth of Virginia should have one centralized mapping tool or data center for identifying environmental justice communities. This tool should, as a first step, clearly identify all the distinct geographic areas in the Commonwealth that meet the definitions for communities of color, low-income communities, and fenceline communities according to the definitions provided by the Virginia Environmental Justice Act.
- Work directly with Virginia Energy to further develop state mapping tools and continue to fund equity programs and modeling efforts currently under way by the department.
- The Commonwealth’s environmental justice mapping tool should provide clear representation for each population of color afforded consideration by the Virginia Environmental Justice Act.
- The Virginia Environmental Justice Act definition for “EJ Communities” is based solely on demographic characteristics, race/ethnicity and income, and does not account for existing environmental burden, it is recommended that an effort take place to use the mapping tool to highlight several key groups of EJ Communities: those most at risk from poor air quality, those most at risk from poor water quality, those most at risk from solid waste related impacts, and those most at risk from climate-related impacts. These categories relate to Pollution Control Boards and climate-related initiatives and could help support decision making and resource allocation.
- A series of state-wide public listening sessions should be undertaken to achieve meaningful involvement in the mapping tool’s development. Developing a tool like this with a robust and meaningful stakeholder engagement process is consistent with the core principles of environmental justice.
- Quantitative scoring schemes, which are created via spatial modeling exercises,

should be approached with caution.

- Mapping tools are not an endpoint, rather, they are a starting point for planning and conversations with environmental justice as the goal. This principle should guide the development of any tools. Census blocks in addition to more granular data should be used to inform mapping tools.

4. Energy Efficiency Programs and Jobs

- Create an Office of Just and Equitable Clean Energy Transition to identify impacted communities and work with local stakeholders to develop transition plans. The Office would advise the state legislature and regulators on energy efficiency policies and programs and could be housed under the secretariat responsible for workforce and labor. The Office would also increase the capacity of the Commonwealth to steward an equitable and just transition in communities negatively impacted by the downturn in the coal economy.
- Develop incentives and programs to stimulate job growth in energy efficiency with and for communities of color, indigenous communities, and low-income communities. This sector has proven job creation, lots of good jobs, rapid job growth, and creates more jobs for every dollar invested.
- Develop and streamline current economic development plans to coordinate federal aid and workforce training in energy efficiency jobs focused on vulnerable communities.
- Create state funding sources for energy efficiency upgrades and solar electric systems for low- income households, renters, seniors, and people with mixed abilities throughout the Commonwealth.
- Create a high energy efficiency building code mandate throughout the Commonwealth including construction and renovation for public and private buildings. While upfront construction costs may be higher, a study will be needed to explore offsetting costs for low-income households through lower energy operating costs.
- The General Assembly or governor's office should create a liaison position to assist Virginia Energy and the DEQ with regulatory enforcement and consider it in the budget.

5. Water Infrastructure, Safety and Resilience

- The Administration and General Assembly should provide grant writing support for localities, especially for resilience and emergency management funds. Virginia Department of Emergency Management (VDEM) has contracted out a company to work with communities to help them with applications for federal grants. Additional state agencies should do this as well. The Virginia Department of Conservation and Recreation (DCR) and VDEM should coordinate to ensure localities are able to access funds.
- DCR should increase public outreach and engagement in the next iteration of the Virginia Coastal Resilience Master Plan.
- The General Assembly should encourage the development of green infrastructure plans for historically marginalized communities and support requirements for additional tree canopy.
- Grant applications for resilience funds should not be solely based on Benefit-Cost Analysis (BCAs), which can leave lower income areas with lower property values.

- The Administration and General Assembly should keep and allocate additional funds to the Community Flood Preparedness Fund and the Resilient Virginia Revolving Loan Fund.
 - The Administration should lead in setting out an equitable process for localities to access resilience funds, including in some cases eliminating match requirements.
 - Continue to use the allocated \$411.5 million in federal American Rescue Plan (ARP) funding to reduce water pollution and increase access to clean water across the Commonwealth.
 - The Administration should encourage localities and have state agencies support in accessing Water Infrastructure Finance and Innovation Act (WIFIA) loans so that needed infrastructure improvements are made.
 - VDH should utilize federal investments to provide funding to supplement ongoing lead replacement programs.
 - Virginia should maximize its use of Distributing Drinking Water State Revolving (DWSR) Funds and all Federal opportunities to maximize water infrastructure improvements and ensure the public safety of Virginians. Low-income communities should continue to be prioritized in DWSR funds.
6. Sustainable, Clean, and Equitable Transportation
- Virginia should increase environmental justice stakeholder engagement during the National Environmental Policy Act (NEPA) review of transportation projects (Appendix A) and should consider the same for all stakeholder engagement processes.
 - Conduct research within jurisdictions across the state to gain insight and recommendations from local communities on improvements they hope to see in public transit systems and other alternative clean transportation modes; focus specifically on dialogue with vulnerable communities and education around the benefits of mobility management strategies.
 - The governor or General Assembly should create a Virginia Clean Active Accessible Transportation Task Force of diverse stakeholders and communities most impacted by transportation inequity to study, design and create mobility management strategies (also called transportation demand management, or TDM).
 - Implement mobility management strategies to improve transportation options, encourage use of more efficient modes, create more accessible land use patterns, and reform biased planning practices to create equity.
 - Use mobility management revenue sources to fund infrastructure for Clean Active Accessible Transportation Modes, which in turn will increase transportation equity.
 - Review and implement mobility management strategies.
7. Capacity Building for Historically Economically Disadvantaged Communities
- Leverage funds from federal initiatives stemming from the Inflation Reduction Act (IRA), Justice 40 and the Infrastructure Investment and Jobs Act (IIJA) to empower environmental justice communities across the Commonwealth.
 - Virginia must prioritize and consider cumulative impacts in environmental justice in environmental laws, regulations, and policy decisions per code.
 - Disadvantaged and overburdened communities need support and education to

build capacity and equity, so all citizens of the Commonwealth are empowered to advocate for themselves on environmental decisions.

- All citizens need a strong foundational education in topics relevant to the environment, their health, and how various levels of government make decisions that affect both. A review of the state’s standards of learning (SOLs) and the Virginia Community College System (VCCS) General Education Certificate and Arts & Sciences curriculum is recommended to include environmental justice as a topic for curriculum reflected in the SOLs.
- State agencies should look for opportunities to partner with EJ communities to seek support from federal agencies to attain grants and technical assistance. By working with local community members and hiring local contractors, addressing environmental inequity can also bring environmental leadership capacity and economic development to the communities where it is needed most.
- Expect, plan for, and have patience for the time that consensus building requires. Fully empowering a community to identify their own priorities through education and robust public engagement, building leadership from within the affected community, and providing appropriate oversight of funds are crucial elements for the success of any plans to provide support to impacted communities.

8. Sovereign Tribal Nations and Indigenous Populations

- Providing staff and resources to the Secretary of the Commonwealth to effectively carry out Executive Order 82 “Consultation with Federally Recognized Tribal Nations for Environmental and Historic Permits and Reviews”.
- Identify pathways for meaningful engagement with tribal citizens and members of Native American populations that are not part of a recognized Virginia Tribe.
- Develop a state guide to tribal areas of interest when it comes to environmental and/or cultural concerns.
- Allow sovereign tribal grant access to the Virginia Land Conservation Foundation (VLCF).

9. Permitting

- Virginia Department of Economic Development should make presentations to the EJ Council when new projects are being proposed or considered that could be sited in EJ communities.
- The Department of Environmental Quality and other permitting agencies should brief the Council when permits are being proposed or considered that could impact EJ communities.
- The Department of Environmental Quality and other permitting agencies should consider what existing facilities, businesses, municipal, transportation or industrial land uses are close to a proposed permitting operation and include the cumulative impact of those facilities in making permitting decisions and reviewing the environmental justice implications of its’ decision-making process. These agencies should also consider data on water and air quality in EJ communities as part of the impact evaluation as they make permitting decisions.
- The Department of Environmental Quality, the Department of Agriculture and other relevant agencies should detail for the Council their process for considering environmental justice in its permitting process.

Appendices

Appendix A. VCEJ Comments to VDOT to Enhance Environmental Justice Stakeholder Engagement on Transportation Projects

Environmental Justice Stakeholder Engagement

The Virginia Council on Environmental Justice is composed of members of diverse geographic, ethnic, racial, and socioeconomic backgrounds from across Virginia. We are community leaders who can serve as a resource and connector for Virginia agencies on environmental justice engagement matters. In 2022, the Council supported multiple agencies including the Virginia Department of Energy and Virginia Department of Transportation (VDOT) on several projects.

The Infrastructure and Just Transition Subcommittee continues to provide feedback to the Virginia Department of Energy on the Historical Economic Disadvantaged Communities (HEDC) report required under the Virginia Clean Economy Act.

The Council also supported the VDOT through providing feedback and participating in multiple stakeholder listening sessions relating to ongoing and future NEPA projects, providing the following comments this past August.

VCEJ Response to VDOT NEPA Outreach Questions – August 17, 2022

Who are the best regional contacts VDOT can rely on for outreach?

Outreach infers a one-way exchange of information; meaningful engagement is a two-way conversation. Make sure to get the message out and engage as deeply with the folks most likely to be affected, using different tools and mediums needed to reach them.

Communities are ever changing and rarely monolithic in their views. It is important to meet a community where they are and communicate in more inclusive ways, they receive their information. This means to look for local places to be present. Materials might be best in several different languages depending on the community. Some examples: posting flyers in local stores and libraries, media buys in the county paper, showing up to community events with information. Depending on the budget, it may be worth sending physical mailers to community members or holding telephone town halls. And, during the COVID pandemic, we have found that community meetings can be effectively held virtually or as webinars. These virtual events can be a valuable avenue for providing information and collecting input, if in person meetings are difficult to hold.

Finally, VCEJ members are committed to serving as a “connector” to local elected officials, local grassroots and nonprofit groups. If you reach out to advocacy and activist groups ahead of the proposals, you can mitigate many costs and issues at the beginning.

Are there any potential risks associated with enhanced efforts?

VDOT should be cautious about labeling communities and neighborhoods. People deserve to have agency over the way they are labeled and grouped. We need to be careful about how we name and

discuss these matters of social justice, especially in NEPA reports.

For example, instead of calling a geographic area an "EJ community" or a "disadvantaged community," we recommend adopting wording more along the lines of "an area that meets the definition for an EJ community."

Are there options we are missing that would be more successful?

The examples described in the slides are good strategies. A few other ideas:

- Identifying appropriate digital communication tools to gather input. For example, an interactive mapping tool where the public can leave georeferenced comments, for areas with good internet
- Mailings that include tear off postcards pre-addressed to the agency to encourage folks to sign up for comment or to get notifications
- Spending time getting to know the different regions and who the community leaders are in those regions. They are the best for disseminating information that traditional media could miss.

What level of community identification seems appropriate in public facing NEPA documents and other planning documents?

The wording of this question is unclear, but above, we comment on the risks and to take caution with how VDOT labels different types of stakeholders.

How may regional points of contact partner with VDOT to enhance outreach?

Regional contacts can help guide and connect VDOT to receive input directly from communities.

What level of interest is there in a project at the NEPA stage?

It is important to spend time and intention with each project proposal. Depending on whether the applicant has done enough prior engagement, there can be varying levels of interest at the NEPA stage. However, it is a good practice for community engagement to start before a project is fully formed. By the time NEPA documents are filed, the project is usually conceptually complete, site is chosen, and not much is left that can be changed. For a controversial project, or one where little outreach has been done, the NEPA stage is critical. Additionally, community stakeholder input that is not thoroughly conducted could result in costly litigation or delays to the project.

How can the community be assured that their comments/issues have been resolved?

Outreach and engagement can take different approaches. Money needs to be spent getting notices in local newspapers and/or other forms of media. On the ground groups should be part of the relationship building as well as the local elected officials.

VDOT can also demonstrate their commitment to communities by responding to public comments, resolving issues, and following up as needed. This communication will help demonstrate ongoing dialogue even if there are potential points of contention or disagreements.

Finally, do not be afraid to be creative, dedicating resources, forming new partnerships, whatever it takes to build a strong relationship. It is important to start off on the right foot, to take the time needed to do things right, to engage early and often from the very beginning. The later it is in the process, the harder or more costly to go backwards.

Appendix B. Public Comments Received by the VCEJ

Public Comments Received at VCEJ Meeting on March 17, 2022

Commenter Organization: Hope for Bristol, Bristol, VA

I had hoped to call in to provide public comment during your Council meeting today, but I understand there have been technical difficulties. I would be grateful to have my comments below read into the public comment session. DEQ recently organized a panel of engineering experts to provide recommendations for the Bristol VA Landfill, the emissions from which have plagued nearby residents with noxious odors and acute health symptoms. I feel this panel is a very positive step in the right direction. They are scheduled to meet on March 21 - 22, 2022 with City of Bristol VA officials and landfill consultants. However, this process appears to be happening behind closed doors, as do the decisions that will follow - such as engineering steps to be outlined in Consent Orders. On behalf of residents near the landfill and a local organization called HOPE for Bristol, I submitted a formal request on Tuesday March 15, 2022, to Director Rolband.

This request was for meaningful involvement opportunities for community members adversely affected by the Bristol VA Landfill. We have requested public observation of the panel process, a public comment session to the panelists, and additional opportunities for meaningful involvement in future decisions about the landfill. That letter is attached to this email. At this time, residents do not have direct representation on the DEQ Expert Panel for the Bristol Landfill. I want to emphasize that point because I feel there may be some confusion in how the panel has been described to VCEJ and others who have inquired. While two of the experts on this panel were previously recommended by myself and by HOPE for Bristol as experts worthy of DEQ's attention, they were simply recommended because of their track records of solving problems in similarly difficult landfills. No expert on the panel directly represents HOPE for Bristol or the residents affected by the landfill. The suggested experts are simply good at their job and were recommended to DEQ prior to the panel formation for this reason alone. A need still exists for meaningful involvement of affected residents in future decisions about the Bristol VA Landfill.

On a final note -- as I write this, students at Highland View Elementary School in Bristol, VA, are reportedly suffering nausea, headaches, and burning eyes today as the landfill emissions have filled their classrooms and schoolyard. This elementary school is one of the most disadvantaged in the Commonwealth, and these students come from families whose homes are frequently inundated with gases and odorous pollution from the landfill. These families deserve a voice in the decisions ahead. Thank you so much for your time and consideration.

Public Comments Received at VCEJ Meeting on May 12, 2022

Commenter Name: Reverend Jackie Nophlin, Bristol, VA

Commenter Title: Pastor of Community Church in Bristol Virginia and President of the Bristol Ministerial Alliance

Pertaining to the landfill and the issues the communities are having including the odors, the smell and the location of the landfill which is near black and brown communities, elderly community members and children, and a school in the vicinity. People are suffering and have been complaining for years to no avail. Now that the odors have reached the wealthy and privileged areas there has now been complaining and protest and an attempt to have community members stand up and make their voices heard. This is difficult because people feel that if their voices are not heard then they will just live with the issue. The community now has the ear of the Council and local government because of the interest from the wealthy community members.

Personal Story: Granddaughter lived near the landfill, and she regularly went over for girl's nights. They could smell strong odors when outside playing with her niece, even burning eyes. They began to have illnesses that were mistaken as COVID, they took at least 8 COVID tests and were going to the urgent care often. She also once had a nosebleed that she attributes to the landfill odors. People are literally living in these conditions on a daily basis and there is no certainty about what it may be doing to the community. Granddaughter moved across town away from the landfill and almost immediately her health improved – not everyone has the ability to pack up and move. The community desperately needs help from the community, and they feel that local government has shut them down. They feel that the door is opening, and they are being invited to come to the table and talk now that DEQ has stepped in to produce recommendations. The community has an alliance that was able to purchase 1,000 air purifiers to help the community.

Commenter Name: Reverend Dr. Samuel Weddington, Bristol, VA

Thank you to DEQ for making recommendations and producing a road map. Unfortunately, the road map is the equivalent of summiting Everest, but at least there is a path forward. Thank you specifically to Director Rolband, Renee Hoyos and Chad Martin for their efforts surrounding the Bristol Landfill. Additionally thank you to VA Interface Power and Light for organizing site visits and other community interventions. Also thank you to the Sierra Club for their efforts. They are working to have the city of Bristol begin to implement the report, specifically starting with communication with the public. They would like a timeline in relation to when things will begin getting done. They also would like the city to communicate about financial needs – the city will not be able to afford this so knowing what it will cost is important. Would like to recommend that the governor's office help look into funding to address the issue – this may be the largest environmental disaster happening in the state and needs addressing urgently. Working on pilot program with local churches to do a weatherization program especially targeting houses near the landfill, not only to meet energy requirements but also to help seal from gases that are coming from the landfill. Some things are outright miserable for community members, including the inability to sleep at night. They really need help at the state and federal level addressing these issues.

Public Comments Received at VCEJ Meeting on July 20, 2022

Commenter Name: Gustavo Angeles

Commenter Title: Environmental Justice Program Coordinator, Sierra Club Virginia Chapter

Gustavo Angeles is working with the Bristol Ministerial Alliance and has emailed comments. There is a video of a recent City of Bristol city council meeting available online¹⁶. He encouraged council members to view the updated PDF document named “BVA Landfill Update and Requests” (below) by Rev. Dr. Sam Weddington and a “Where We Stand” (below) pdf as well. The landfill will close September 12, 2022. Engineers have developed a 60-page plan released to the public but doesn’t address all the recommendations outlined by the expert panel. There remains a lack of public engagement and outreach. He asks the council to help fulfill the need for community relief (vouchers for hotels and air purifiers, weatherize older housing stocks) and to help obtain more robust communication efforts from VADEQ and the city of Bristol. They want the Governor to use his office to require DEQ and Bristol to undergo a rigorous public awareness and engagement campaign.

Bristol Virginia Landfill Update and Requests

7/19/22

Rev. Dr. Samuel Weddington

Member, Bristol Area Ministerial Alliance

I hope this report will update the Governor’s Council on Environmental Justice on the status of the Bristol, Virginia landfill, and the ongoing concerns of the community. I would also like to thank Dr. Don Evans, PE, and Dr. Dan Firth of the Sierra Club for helping me formulate constructive questions and concerns regarding this report. Without their aid, key insights as to what is missing from the city of Bristol, Virginia’s Plan of Action would not be present in this update.

1. Status Update

Since our last update on 6/1/2022, there have been several developments for which we, as a community, are thankful. The first is that in response to the complaint and federal injunction filed by the city of Bristol, TN,¹⁷ the city of Bristol, VA entered into an agreement with the federal district court to have the court grant “preliminary injunctive relief.”¹⁸ This means that the city agrees to a set of five initial steps, agreed to by the city of Bristol, TN, which includes the closure of the landfill by September 12, 2022. However, the complaint/lawsuit will remain open in federal courts (assuming the judge agrees to the terms of the agreement), giving the city of Bristol, TN the option to pursue further action and relief, if necessary.

As part of that process, SCS Engineers, the engineering firm the city of Bristol, VA hired to help mitigate this ecological disaster, developed a 60-page plan to respond to the recommendations of the expert panel convened by the Virginia Department of Environmental Quality. The city of Bristol, VA released the plan to the public on July 7, 2022.¹⁹

¹⁶ https://www.youtube.com/watch?time_continue=3&v=UYFDLMGWRqQ&feature=emb_logo

¹⁷ <https://www.bristoltn.org/DocumentCenter/View/9578/2022-05-26-Complaint>

¹⁸ https://heraldcourier.com/news/local/both-bridols-reach-agreement-on-landfill-injunction/article_06fb3ebd-13c4-51ea-87ad-e913aae2b076.html

¹⁹ <https://www.bristolva.org/DocumentCenter/View/3780/Bristol-Plan-of-Action?bidId>

2. City's Plan to Address the Expert Panel Report

While we are thankful for this plan, it is important to note that it seeks to address the initial concerns raised in the injunction and does not address all the recommendations outlined by the expert panel. Moreover, it is very clear that several critical components of the city's strategy are experimental in design and will take years to finalize. For example, SCS is proposing a pilot project for the sidewall mitigation as a short-term project (section 4.3). The final corrective action is listed as a long-term item, meaning that final resolution to a major source of odor and gas propagation is five years out (section 5.3). Since sidewalls are the most serious emission source, corrective action coming five years into the future is utterly unacceptable. The problem is not inexorable. We feel more intensive effort, though costs will rise (thus the need for more state and federal funds to be made available), may result in quicker relief for our community.

Our concerns abound. For example, the SCS plan talks about maintaining and monitoring the leachate collection and removal system at various points throughout the report (section 3.9, for example), preventative and corrective maintenance (section 3.9.1.2), and the integration of a cleanout system (section 4.2.1). However, discussion of leachate pre-treatment is missing from the plan, as are strategies to deal with high benzene concentrations in the leachate that is currently pumped into the city's sewer system. As the expert panel report suggests in recommendation #7, a treatment plan to remove leachate from the waste mass "must be addressed" (finding #9), especially in light of the fact that the landfill may contain up to 300 million gallons of BTEX-heavy leachate (section 2.3.4).²⁰

Finding #5 of the expert panel report outlines that clear lack of data for diagnosing the ETLF, and the identification and elimination of fugitive gas emissions from the landfill surface and sidewalls is clearly outlined in recommendations #1-3. However, there is no mention of ambient air monitoring around the landfill in the city's Plan of Action. This prevents adequate assessment of the closure process and the environmental health impact of non-methane organics (benzene, polychloro-organics, PAHs, etc.), hydrogen sulfide, ammonia, and mercaptans. Our list of questions and concerns about this plan are extensive, and this is only after approximately two weeks of review. One of the biggest objections we have to the city's and VADEQ's approach, currently, is that there is still a lack of critically needed community outreach to help citizens understand the plan and provide feedback. While we understand that the city will hire a PR firm to manage public outreach (ES 3) at the cost of ~\$80,000 (\$54,600 as per 6.2.2 and \$26,324 as per 6.3.1), recommendation #10 of the expert panel clearly identified a need from our community: "an active community outreach program to communicate strategies, provide status and progress reports, and receive citizen feedback." Simply releasing reports, or having public comment from the City Manager that the city has simply submitted the report (as per the agreement to injunctive relief) is not adequate communication, nor does it receive citizen feedback in a constructive manner.²¹

3. Ongoing Impacts on Citizen Health and Quality of Life

As reported earlier, there are two measures immediately available to measure impacts on quality of life for residents. One is the complaint system utilized by the City of Bristol, Virginia, operated under the terms of the Odor Mitigation Plan imposed by VADEQ.6. To date, there have

²⁰ https://www.bristolva.org/DocumentCenter/View/3632/Bristol-Landfill-Expert-Panel-Report_25April2022

²¹ 5 See the City Manager's comments at 4:30 from the 7/12/2022 City Council Meeting, <https://youtu.be/UYFDLMGWRqQ>

been nearly 9,500 complaints filed on this system in the last 18 months. Another popular platform citizens use to both log complaints, and to “track” the move of the gas cloud over Bristol is the app “Smell My City.”²² As you can see when you review the historical data, there is a current uptick in complaints on this platform. This follows historic data, suggesting the influence of atmospheric/temperature inversions on the intensity of the smells at given times during the year. As expected, we have seen an intensification in gases as we come into late summer/early fall. The impacts of this increase in intensity on the physical and mental health of impacted populations has been overwhelming.

4. Community Needs

Beyond the five requests outlined in our 6/1/2022 report,²³ we see two clear needs that we would recommend to the Council to bring to the Governor’s attention. The first is the need for community relief. Citizens continue to suffer from landfill emissions, and the need for vouchers away from the area during heavy gas periods, as well as purifiers, is a clear need. Also, redoubling efforts to help weatherize the older housing stock in Bristol, Virginia would not only pay dividends in terms of raising energy efficiency, it would also help control the inflow of gases into residents’ homes.

The second need is more robust communication efforts from VADEQ and the city. We feel the public is entitled to ask and have answered before any consent order between VADEQ and the city is put into place. Moreover, hiring a PR firm is a piece of the strategy that was clearly called for in recommendation #10 by the expert panel, not the whole. Accordingly, the city and VADEQ are not excused from clearly communicating to the public, in language we can understand, the nature and extent of the project, other steps (like leachate treatment) that are also a necessary, and giving the public space to comment on the impacts of the landfill and what they will be asked to endure over the next several years as this crisis is addressed.

In light of this, we have called on VADEQ, the City of Bristol, Virginia, and SCS Engineers to hold a series of public meetings. The purpose of these meetings is to clearly and concisely outline the details of this plan, other steps that will be necessary to address this crisis, and allow the public to ask questions about the plan. Without this critical step, it will be very difficult to rebuild public trust in either the city or regulatory agencies.

To that end, we are asking that the Governor use his office to require VADEQ and the city of Bristol to undergo a rigorous public awareness and engagement campaign in our region. We want a viable and effective solution to this problem. Given that this landfill problem will be with us in some form or another for generations to come, now is the time to ensure that we have a plan that both addresses technical needs and builds community cooperation.

Submitted respectfully,

Rev. Dr. Samuel Weddington
Senior Pastor, First Presbyterian of Bristol, TN
Minister Member of the Bristol Area Ministerial Alliance

Where We Stand re: BVA Landfill
6/1/22

²² <https://smellmycity.org/visualization?share=true&date=20220601&zoom=11&latLng=36.591693,-82.133406>

²³ <https://drive.google.com/file/d/1EZqcy0DX1hEp0oEySjC3JDtzJQqkD105/view?usp=sharing>

Rev. Dr. Samuel Weddington
Member, Bristol Area Ministerial Alliance

I hope that this outline will help you as you consider the ongoing impact of the BVA landfill on our community. In this document, I will outline the recommendations VADEQ has given us, and the challenges before us. I will then turn to ways you can help us achieve remediation goals at the landfill.

1. Findings and Recommendations

The state of the landfill in BVA is no longer up for debate. We have a much clearer sense of what is going on, and the steps needed to fix the problem. Interested parties can read the report of the expert panel themselves by going to the VADEQ site and downloading the report for themselves.²⁴

According to the report, there are 10 findings of the panel in regard to the landfill (pp. 5- 9). To quickly summarize these findings, the odors/gases that have been impacting the community are coming from the landfill (especially in fissures in the side walls and the operating surface), made worse by the operation of the landfill due to problems with water intrusion and drainage, overdraw of the newly installed gas system (introducing excess oxygen; see p. 5), and improper cover of the surface. All of this has led to the landfill being in the early stages of an ETLF event (Elevated Temperature Landfill). This ETLF has led to not only odor issues, but the generation of excess levels of BTEX (Benzene, Toluene, Ethylbenzene, and Xylene), toxic compounds that present hazards to the community. To make matters worse, we don't know the extent of the ETLF condition due to lack of sufficient data. Additionally, the "settlement" of the landfill waste (the movement of the waste as the chemical reactions consumes waste, and reduces the overall area of the mass, creating problems as the mass shifts and moves over time) seems to be increasing, a sign that things might be getting worse, and certainly making measures like well-drilling tough because those wells will likely be compromised over time.

In response to these findings, the expert panel recommends 10 measures that BVA Council needs to enact in order to deal with the landfill before the ETLF reaches from critical thresholds (pp. iii, 10).²⁵ As

²⁴ <https://www.deq.virginia.gov/home/showpublisheddocument/14196/637865007723100000>

²⁵ 1. Test and construct a sidewall odor mitigation system around the Landfill perimeter that will be designed and constructed to mitigate landfill gases emanating from the Landfill/quarry sidewalls.
2. Improve the performance of existing gas extraction wells including minimizing air intrusion pathways through Landfill cover. Additional gas extraction wells will be needed to reduce emissions and temperatures.
3. Identify and eliminate to the extent practical any landfill gas fugitive emissions at the Landfill surface. Weekly monitoring activities of gas emissions at the Landfill surface will be required.
4. Install settlement plates and conduct monthly surveys to document the locations and rates of settlement in the waste mass.
5. Install and monitor a dedicated system of thermocouples in the waste mass to monitor Landfill temperatures for greater spatial resolution (horizontal and vertical) and to provide data at a greater frequency.
6. Install at least five (5) deep dedicated monitoring wells to enable sampling and characterization of leachate and measurement of temperature profiles in the waste.
7. Install and operate large-diameter dual-phase extraction wells for removal of gas and leachate. Treatment requirements for extracted leachate must be determined.
8. Install a temporary geosynthetic cover over the entire Landfill. This will require substantial grading of the existing Landfill surface to direct runoff to the southeast corner of the Landfill where it is expected a stormwater management pond can be constructed to manage stormwater that is collected on top of the geomembrane cover.
9. Develop and implement an effective and sustainable stormwater management plan and settlement management plan for the Landfill.
10. The Panel recommended an active community outreach program to communicate strategies, provide status and progress reports, and receive citizen feedback.

you can tell, this is quite the “laundry list” of things to get done. That said, these are steps that are achievable with an increased sense of urgency from the city, and with funding that will allow the city and its engineers to get to work.

In regard to the ongoing operation of the landfill, the panel was pretty clear that they are highly skeptical that proper results can be achieved if the landfill continues to operate (p. 13). This is due to a number of factors, two of the greatest being ongoing problems with drainage (it is a quarry landfill, after all), and the settlement issues that the landfill has already undergone, and will likely undergo in the future. Moreover, due to elevated levels of toxins like BTEX, there is an issue with ongoing worker safety (p.14).

In summary, the landfill needs to be closed, remediation to begin as soon as possible, and monitoring put into place to keep the landfill from moving further into a state of disrepair over the long course of its lifetime.

2. Impacts on Citizen Health and Quality of Life

The importance to both Bristols (Tennessee and Virginia) of properly dealing with the landfill crisis cannot be overstated. If these remediation steps are not enacted, we have every indication that the landfill will continue to deteriorate. Conditions within the city will only get worse, and the cloud of odors/gases will only expand over time. Moreover, if not treated properly, the production of toxins like BTEX will only increase, creating real health and safety issues for residents of our community.

In regard to impacts on quality of life for residents, two measures are immediately available. One is the complaint system utilized by the City of Bristol, Virginia, operated under the terms of the Odor Mitigation Plan imposed by VADEQ.²⁶ To date, there have been over 9,200 complaints filed on this system in the last 18 months. Another popular platform citizens use to both log complaints, and to “track” the move of the gas cloud over Bristol is the app “Smell My City.”²⁷ As you can see when you review the historical data, there is a current uptick in complaints on this platform. This follows historic data, suggesting the influence of atmospheric/temperature inversions on the intensity of the smells at given times during the year. As a result, we can expect gases to intensify as we come into late summer/early fall. The impacts 3
<https://www.bristolva.org/FormCenter/City-Help-Desk-7/Solid-Waste-Facility-Concerns-68> 4
<https://smellmycity.org/visualization?share=true&date=20220601&zoom=11&latLng=36.591693,-82.133406> 4 of this increase in intensity on the physical and mental health of impacted populations has been overwhelming.

In conclusion, if Bristol is going to be “a good place to live” where families and individuals thrive, and where businesses want to invest and grow the economy, then it will need a future free of the threat the landfill currently poses. If Bristol, Virginia does not act quickly and in compliance with the recommendations laid out by the panel, then the risks to our community cannot be overstated. In short, who would want to buy a home or build a business in a place that smells like a dump, and poses a long-term threat to health and well-being of its citizens?

3. Complaint and Injunction

The most recent development in this story is the complaint and injunction filed by the City of Bristol, TN against the City of Bristol, VA in United States District Court, Western District of Virginia on May 26, 2022.²⁸ The complaint²⁹ is in three parts, claiming that Bristol, VA has: (1) violated provisions of the Clean Air Act (CAA) as it pertains to the Title V permit granted the city under the authority of the CAA,

²⁶ <https://www.bristolva.org/FormCenter/City-Help-Desk-7/Solid-Waste-Facility-Concerns-68>

²⁷ <https://smellmycity.org/visualization?share=true&date=20220601&zoom=11&latLng=36.591693,-82.133406>

²⁸ <https://www.bristoltn.org/1477/Bristol-VA-Landfill>

²⁹ <https://www.bristoltn.org/DocumentCenter/View/9578/2022-05-26-Complaint>

(2) violated provisions of the Resource Conservation and Recovery Act (RCRA) in the way it has handled waste that has resulted in the emission of noxious odors and harmful gases, and (3) has created a public nuisance that substantially impacts the ability of Bristol, TN to serve its citizens, and created adverse health impacts on its citizens and employees. The injunction³⁰ is an expedited motion for the court to order the city of Bristol, VA to: (1) install sidewall odor mitigation systems at the landfill, (2) install instrumentation to monitor the temperature of the waste mass more adequately, (3) cease accepting waste at the landfill, (4) use adequate cover to seal the waste at the landfill, and (5) submit a plan on how the city will implement the findings of the expert panel within 60 days.

In response, the City of Bristol, VA has offered a settlement agreement³¹ to Bristol, TN wherein the city of Bristol, VA would agree to: (1) be enjoined from violating the CAA and RCRA and complying with those statutes “as soon as practicable,” (2) begin taking action to eliminate odors, (3) stop accepting trash after the landfill “is contoured to maximize stormwater runoff retention,” (4) develop a plan for closure of the landfill within 120 days of an agreement, (5) pay Bristol, TN \$250,000 for the legal costs it has incurred, (6) install a sidewall odor mitigation system “if it is determined to be successful based on engineering standards after testing,” (7) install and monitor temperature monitoring equipment in the waste mass, with Bristol, TN agreeing to “aggressively assist Bristol, VA in seeking outside funding,” (8) cease accepting waste after the landfill is contoured, (9) provide adequate cover for the waste, (10) and have Bristol, TN acknowledge that the “entire costs of these corrections cannot be borne by the citizens” of Bristol, VA.

To date, there has been no official response from the city of Bristol, TN.

4. Needs

In light of the tremendous technical challenges (not to mention public relations challenges) outlined in the report, it should be of no surprise that financial support is the great need. As outlined in an independent financial report by SCS Engineers (undertaken by the city in 2019)³², the city cannot afford to close the landfill, yet its ongoing operation presents enormous financial problems as the tipping fees currently charged by the city leaves great deficits for future generations of Bristolians to deal with (p. 32). In light of the recent recommendations by the expert panel, additional financial burdens have been put on the city if it is going to effectively remediate the landfill. Moreover, if the landfill is closed, the city is going to need a place to dispose of its waste.

As of this date, there is approximately \$2,000,000 set aside in the Commonwealth’s 2022-2024 biennium budget via the Department of Natural and Historic Resources.³³ Moreover, under Amendment Item 377 #2c, VADEQ is directed to provide technical assistance to the city to remediate the landfill, and help resolve ongoing health, environmental, and quality of life issues related to the landfill. We are appreciative of these efforts.

However, \$2,000,000 is not enough money to fix this problem in an efficient and expedient manner. Though we do not wish to be overly critical, in this same budget, Amendment Item 375 #7c³⁴ gives the City of Chesapeake \$9,000,000 from the general fund (via Natural and Historic Resources) in order to expand a pool at its community center. Amendment Item 386 #1c³⁵ gives Botetourt County \$6,000,000 from the general fund (via Natural and Historic Resources) to acquire a site, design, and construct the Fincastle Museum, for which the County need only provide \$500,000 in matching funds.

³⁰ <https://www.bristoltn.org/DocumentCenter/View/9577/2022-05-26-Expedited-Motion-for-Preliminary-Injunction>

³¹ https://www.bristolva.org/DocumentCenter/View/3747/BRTN-Lawsuit-Settlement-Agreement_52722

³² https://drive.google.com/file/d/1ZN6f0xGVhRyvJHXis1HUV_KmTGrrS8di/view?usp=sharing

³³ <https://budget.lis.virginia.gov/amendment/2022/2/HB30/Introduced/CR/377/2c/>

³⁴ <https://budget.lis.virginia.gov/amendment/2022/2/HB30/Introduced/CR/375/7c/>

³⁵ <https://budget.lis.virginia.gov/amendment/2022/2/HB30/Introduced/CR/386/1c/>

While I am sure that these are worthy projects, and we hope the best for these municipalities, the disparity in relative levels of urgency could not be more pronounced. The landfill in Bristol, VA is an ecological crisis that impacts the well-being of Virginia citizens, not to mention residents of another state (thus creating an interstate issue likely to be resolved in federal court). Moreover, the city of Bristol, Virginia is not alone in terms of potential liability.

The waste and air permits that allowed the city to run the landfill under the conditions took place under the regulatory oversight of VADEQ, not to mention that the existence of the landfill is the result of legislative exemptions granted by the Virginia Legislature. That \$2,000,000 is provided to help remediate an environmental disaster of this scope while other municipalities are granted sums many times larger for projects that don't hold such dire environmental, health, and economic consequences ought to raise serious concerns for every citizen of the Commonwealth.

To be blunt, examples like this convince residents that the landfill crisis in Bristol, Virginia is a clear-cut case of environmental injustice. In Bristol's case, poor and vulnerable communities are not only forced to carry the burden of environmental degradation, but they are also starved of the resources required to address such disasters. Simply put, half-measures like this only serve to convince many in our community that if Bristol was east of Roanoke, more adequate funding would be made available to help with the disaster. Surely the crisis at hand might require a pool be deferred for one year.

In addition to the financial needs of Bristol, Virginia to remediate this disaster, there is also the need to rebuild the public trust in the city's ability to deal effectively with this crisis, and in such a way so as not to discourage ongoing investment in the city by property owners and businesses. This is taken up in recommendation #10 of the expert panel that charges the city to develop "an active community outreach program to communicate strategies, provide status and progress reports, and receive citizen feedback." Unfortunately, the results of communication initiatives undertaken by Bristol, Virginia are mixed. A recent example should suffice to illustrate the problem. At its most recent Council meeting,³⁶ around time marker 50:20, a Bristol, VA resident (Chris Knupp) spoke to Council about the impacts the landfill is having on his family, and the need for the city to do a better job of communication. At this point, the City Manager interrupted Mr. Knupp and proceeded to spend the next 6 minutes (approximately 3x longer than Mr. Knupp's actual comments) lecturing Mr. Knupp and those in attendance about how effectively he has communicated with the citizenry, and the wrongs done to him by the community despite his good faith efforts. Simply put, the City continues to falter in regard to its approach to the public, and needs clear guidance and boundaries from other authorities on how best to communicate with the general public. It could use the help of agencies like VADEQ's Office of Environmental Justice to engage vulnerable communities effectively that have to bear the brunt of this ecological disaster.

In light of this, we, the minister members of the Bristol Area Ministerial Alliance, along with our allies at Virginia Interfaith Power and Light, as well as the Sierra Club, offer this following short list of immediate needs. This list is not meant to be exhaustive, but more of a conversation starter, conscious of the fact that there will be now unknown difficulties as this process moves forward:

1. The Governor, the Council on Environmental Justice, the Office of Environmental Justice (VADEQ), VADEQ, and the Secretary of Natural and Historic Resources need to make remediation of the Bristol, Virginia landfill a fiscal priority. Again, we are appreciative of the hard work that has gone into producing the findings of the expert panel, and we are thankful that some monetary relief is coming. However, \$2,000,000 is only a small fraction of what is needed to deal with this crisis effectively, and on a reasonable time-table.
2. The Council on Environmental Justice needs to vote on a resolution to recommend that the Governor and associated agencies make remediation of the Bristol, Virginia landfill a fiscal and

³⁶ Council Meeting, 5/24/2022, <https://www.youtube.com/watch?v=tHmMAzKMgA8> , time marker 50:20

regulatory priority. Specifically, while we do not have a final cost estimate on remediation costs, early projections are between 80 and 100 million dollars. In light of the fiscal prospects for Bristol, Virginia, this would suggest that between 25 and 30 million dollars would need to come from the Commonwealth.

3. We ask that the Council on Environmental Justice and related state agencies recommend to federal legislators representing the Commonwealth that they make remediation of the Bristol, Virginia landfill a fiscal and regulatory priority. This recommendation should be made in conjunction with the recommendation to the Governor of Virginia in point 2. Part of the funding calculus lawmakers should be looking at is making the case at both the state and federal levels that Bristol, Virginia is a prime candidate for receiving emergency funds set aside for Environmental Justice initiatives at both the state and federal level. Those who suffer the most from the landfill (living directly adjacent to it on the Virginia side) are either poor, or make up the largest concentrations of communities of color in Bristol, Virginia. The “intersectional” nature of the environmental crisis (disproportionate burden on the poor and communities of color) make Bristol an excellent test case for initiatives recently proposed by the Biden administration.³⁷
4. In accord with recommendation #10 of the expert panel, Bristol, Virginia needs to be as transparent as possible about its plans to deal with the landfill. Apart from constructive dialogue on this matter, and especially as conditions “get worse before they get better,” it is very easy for a spirit of antagonism and recrimination to set in that will prove destructive to the community. As shown in the example given from the last Council session, the city seems unprepared in taking this step. Accordingly, guidance and boundaries from state agencies about best practices regarding communication with the citizens would be greatly appreciated.
5. We ask that the Council on Environmental Justice and related state agencies recommend to agencies like Emergency Management that funding and material relief be provided to meet the needs of the community in light of the crisis. The city, along with 14 See Lisa Friedman, “White House Takes Aim at Environmental Racism, but Won’t Mention Race,” NY Times, February 15, 2022, <https://www.nytimes.com/2022/02/15/climate/biden-environment-race-pollution.html>. 10 civic minded businesses and citizens, as well as lawmakers at the state and federal levels should begin setting aside money and planning for a rollout of much needed direct-aid to citizens. If the community is going to have to endure the odors/gases associated with the landfill, as well as their effects on quality of life, they are going to need help. This is especially true of vulnerable populations in our community. Such relief efforts may look like purifiers, weatherization initiatives that help keep gases out of homes, and hotel vouchers for those caught in their homes during particularly “heavy” periods of landfill gas inundation.

Again, this is not an exhaustive list, but is more a conversation starter as our city faces the long road ahead. Dealing with the landfill crisis is going to take a great deal of time, attention, patience, and most

³⁷ See Lisa Friedman, “White House Takes Aim at Environmental Racism, but Won’t Mention Race,” NY Times, February 15, 2022, <https://www.nytimes.com/2022/02/15/climate/biden-environment-race-pollution.html>.

importantly, cooperation. Everyone, from ordinary citizens to business interests will need to bring resources and influence to bear to help solve this problem.

Submitted respectfully,

Rev. Dr. Samuel Weddington
Senior Pastor, First Presbyterian of Bristol, TN
Minister Member of the Bristol Area Ministerial Alliance

Commenter Name: Kelly Hengler

Commenter Title: Suffolk Civic League

Kelly Hengler emailed follow up comments (below). She talked about the US Port 460 project in Suffolk, VA, which was shot down years ago because of environmental concerns. The people on wells nearby do not want their water quality or air quality to be impacted. There has been a major rezoning request to rezone the port project area from agricultural to heavy industrial. The public was under the impression that there was to be no impact on the community, and the public was not contacted for the VA Reliability Project pipeline. Grace Holmes has been engaging with the community. They have been working with DEQ on wastewater and possible sanitation projects. The community feels as if they continually have projects presented that the public knows nothing about. The port is trying to expand more into heavy industrial in Suffolk, the public has difficulty getting involved in the process due to engagement location. Any effort by the council is appreciated. Another concern has been that of conserving historical resources concerns. Suffolk does not have capacity to notate historic places so unfortunately, they are noted as “nothing”. There have been circular and devastating impacts that are bringing the civic leagues joining together.

VCEJ Follow-Up Information related to Public Comments given on 7/20/22

- Written Public Comment 7/20/22
 - Hobson Village in Suffolk VA is a historical African American Watermen community. Intentional gentrified. Listed on the state/ national historical registrar. Listed on the state and national historical registrar. Erosion - riparian buffer connected to a historic African American cemetery. There is a concerted effort to re-develop a historic infrastructure for the sake of progress without descendants of the original people in mind. – Mary Hill, Resident of Hobson Village, Suffolk

Relevant Hobson Village information:

- Hobson Village Historical Context:
 - <https://www.dhr.virginia.gov/historic-registers/133-5257/>
 - Additional Context from DHR:
 - This is a link to the Historic and Architectural Resources of Hobson Village Multiple Property Document (MPD). What is an "MPD"? It's not a National Register listing. It is a document meant to aid the listing of resources that fit under a theme. So we have, for

instance, a MPD for "Diners in Virginia." We have ones for schools in several counties. In 2007-2009, Hobson resident Mary Hill applied for Historic District status. At that time we did not think there was a district to list there. We consulted with the National Park Service and the Keeper of the Register sent staff to Hobson and we toured the Village. The upshot was to take the "MPD" approach that gives you an overview document with the expectation that individual resources or smaller groups of buildings could be placed on the registers later. We have not done this before in Virginia for a village or local government area, but other states (especially Texas) like to take this approach. No nominations have come forward for Hobson so far. Nominations are not easy to produce. Most are written by consultants and each can cost anywhere from \$5,000 to \$20,000 (the high end would be for a small historic district, a group of 5-10 buildings).

- Mary Hill, President of the Hobson Artesian Well Association and resident of Hobson Village was referred to us by EPA Region 3 Environmental Justice representative, Reggie Harris.
 - We completed a site visit of Hobson Village with Ms. Hill for approximately 3.5 hrs on March 2nd to discuss the below concerns:
 - Septic Tank Removal
 - Stormwater Management (Flooding)
 - Mosquito Density
 - Dust Particle – Truck Traffic
 - Well Line Interruptions due to Development
 - Possible Oil Tank Removal
 - Erosion
 - Historic Significance of Hobson Village
- Most of these concerns fall outside of DEQ's purview but may be able to be addressed by other agencies. The meeting objectives for an interagency meeting held virtually on June 30th were as follows:
 - Discuss all community concerns in detail for deeper understanding.
 - Identify a contact person for each concern in the correct agency.
 - Identify possible action items to help address community concerns.
 - Provide information about each agency's scope when appropriate.
- The agencies/localities be involved in the meeting were as follows:
 - Department of Environmental Quality
 - Virginia Department of Health (Local and Regional)
 - Virginia Department of Transportation
 - Virginia Department of Historic Resources
 - Peanut Soil and Water Conservation District
 - City of Suffolk – Public Works Representative
- Meeting Recording from 06/30/22:

- <https://transcripts.gotomeeting.com/#/s/89ea8f4226ec13af72f4dabda8f458c5a07afa597a0de4720d67550dd030665a>
- Identified Hobson Village Meeting Action Items Summary:
 - Sewage Handling and Disposal Regulations are going to be up for review soon.
 - You can reach out to Jay Duell for information about how to publicly comment during that process.
 - The city does have records of septic systems dating back to the 50s if anyone has questions about what may be on a vacant property.
 - Communities being connected to City of Suffolk sewage system.
 - Based on the level of interest from the community, often using a petition.
 - Contact the City of Suffolk Public Utilities – Paul Retel.
 - Flooding on local streets.
 - You can call in concerns about this to Suffolk Public Works (757-514-7600).
 - Helpful information to include with those concerns include:
 - Exact locations, photographs of flooding, date of storm event.
 - Mosquito Control.
 - You can call in concerns about this to Suffolk Public Works (757-514-7600).
 - <https://www.suffolkva.us/347/Mosquito-Control>
 - Roadway lack of speed limit signs.
 - City of Suffolk Public works will follow up with a review of signs that may have been damaged or removed and ensure the signs meet requirements.
 - VDOT will work with city to draft official response to the request of changing the designation of Crittenden Road from an arterial road.
 - VHR will follow up with grant pools, next steps for the multi property document and provide a connection with a local preservation planner.
 - DEQ will connect with the city to ascertain whether any property records exist for the old service station to begin to investigate whether a tank may still be present underground.
 - Need for sidewalks.
 - There is a process for requesting the securing of grant funding through City Council.
 - Connect with your local city council member on this concern.

Commenter Name: Ms. Mary Hill, Suffolk, VA

Ms. Mary Hill is the seventh generation in Hobson Village, a traditional watermen community. There are environmental impacts compounding between developers building homes and long-term residents. Residents' conventional septic systems are backing up; they would see sewage in the kitchen sink or bathtub. Additionally, there is an eroding riparian buffer and are impacts on the historical African American cemetery. Hundreds of people came out to the planning commission

meeting yesterday. Major stakeholders have not been contacted and no one is communicating to residents before developers come in and gentrify. There is an upcoming August 17 meeting in Suffolk.

Commenter Name: Dr. Amy Brody, Suffolk, VA

Dr. Amy Brody is concerned about the expansion of the waste treatment center. She recently attended a local meeting, and some concerns were allayed. They are adding cells to the landfill and major concerns are the fluid that would be going into the ground and the runoff that would be created. Unfortunately, the cell phone connectivity was bad, and we could not hear her well, but she said that she would send in comments.

Public Comments Received at VCEJ Meeting on September 13, 2022

Commenter Name: Kelly Hengler, Leesville, VA

Commenter Title: Executive President, Crittenden, Eclipse and Hobson Civic League

Kelly Hengler learned that on Wednesday (9/21) there will be a rezoning vote in Suffolk. Her community wants to stop a heavy industrial zone being located right beside an agricultural zone (Port 460). She would like an EPA style community study because the community has the interstate, cypress burrow and ties to Great Dismal Swamp historical heritage. There has been both pro-growth and pro-capacity building along their corridors, but the area was never built up to accept the capacity of large industrial trucks. The community is concerned about drainage into the Nansemond River. The community is composed of heavily majority minority boroughs where the impacts are slated to be. In addition to the area never having been heavy industrial, Port 460 would create a brand-new industrial zone, which would be in the same area as Lake Mead which feeds the Nansemond River. The residents found a JPA application and residents commented on the permit, asked for a public hearing, but that is outstanding. DEQ is awaiting a water permit. There are over one hundred well owners who are concerned about well water and have signed a petition.

Commenter Name: Chief Rosa Holmes Turner

Commenter Organization: Rushmere Community Development Corp, Isle of White and Surry County

Chief Rosa Holmes Turner mentioned that there were several different problems in her neighborhood. Oyster beds had been closed due to a kepone issue. The community wants to look at water issues since the widening of Route 10. Additionally, a stormwater basin has been erected and as a result Turner has had years of stormwater on her property. The stormwater basin overflows onto her property as well as that of elderly neighbors. The Rushmere community was established

in 1582 and merged with Smithfield in the 1970s. Unfortunately, now there are a large number of cancers and MS in her neighborhood that could be associated with environmental issues like toxins in fish. The community needs to have their issues addressed.

Commenter Name: Renada Harris, Brown Grove, Hanover County, VA

Renada Harris thanked the council for visiting and thanked Danielle Simms for outreach, which was something that they had never received previously from DEQ. She and other community members feel that the state needs to level up from the standard of a newspaper listing being adequate for public outreach for major industrial/commercial projects. When a permit applicant puts a notice in the paper, it is not meaningful engagement. She is not only worried about the Wegmans distribution center coming into the community, but also dealing with other industries locating in the neighborhood. There is an economic zone which is in Brown Grove in the county plan. It feels like the plan is to squeeze out the residents in the community. A fence company wants to tear down a home and build a warehouse in its place.

Industry is decreasing home values, which creates a trickle-down effect and would wipe out the community in the long term. Right now, with Wegmans owning 220 acres, they own 20% of Brown Grove. The community has asked for help from Wegmans to curb the impact of light pollution and traffic flow by moving the employee entrance. There are major concerns about traffic because at the church entrance, the marquee has already been damaged by traffic and cars have flipped already. Traffic will be worsened with seven hundred employees going into and leaving the distribution center every day. The community asked for a cumulative impact study to be done as one has not been done by DEQ or EPA. It is an uphill battle to get streams and wells tested to get a baseline before the distribution center is operational. The community does not know what all the negative impacts will be.

Commenter Name: Sheila Joseph, Fairville, Portsmouth, VA

Sheila Joseph has been in communication with the city and talked to a lot of other residents who live in different areas of Portsmouth. She is a long-term resident and has noticed that the city needs updates for its sewer as it is getting more rain now. Joseph has lived at the same address for 32 years. There was a hurricane in 1999 and it created a huge flooding issue and also Hurricane Mathew damaged homes and streets as well. She has collected resident input to get information on flooded streets (not just caused by storms, but with normal heavy rainfall as well). The community has old pipes and flooding is happening in a black and the low-income community. The city is addressing flooding in downtown and High St, but not in low-income areas. Joseph is trying to compile photos and a map of where the flooding is happening as people are negatively impacted by the lack of infrastructure. She suggests that infrastructure/IIJA investments be spent on communities like hers. Joseph's home was flooded in 2016 and now she no longer has access to her first floor; neither FEMA nor the city has helped. A lot of people are getting resources even

though she is not. The EJ council should arrange a visit to the Fairville neighborhood in Portsmouth.

Commenter Name: Carolyn White, Pughsville, Suffolk, VA

Carolyn White mentioned that the stories heard earlier indicate that multiple communities are in the same boat and dealing with similar issues. She has contacted the local government and mayor as well as having attended both Chesapeake and Suffolk council meetings. At one meeting she was disrespected by being laughed at during the city council meeting for expressing her concerns. She still has spoken to many elected officials and representatives and feels that Suffolk and Chesapeake are playing games because money is available. The city was given \$7 million for a Suffolk retention pond. One of the developers was taken to court to get the lot for the retention pond. The city then gave the developer its permit after the city had the lot. The city has misused money in the past. She feels as if her neighborhood is automatically excluded from municipal funding. The city has not been updating stormwater infrastructure for black communities. Nothing moves the city until there is pressure put on them. She also believes that her neighborhood was left out of the census.

Commenter Name: Mary Hill, Portsmouth, VA

Mary Hill said that she could identify with many of other speakers and introduced her mom who is 101 years old. She moved back to Portsmouth in 1999 and is part of the seventh generation of her family in Hobson. She felt that the potential of building generational wealth through land is stolen by developers that are right now threatening to strip community of wealth and land. She reported that development is continuing to escalate in Hobson, Pughsville, Chuckatuck, and Portsmouth, and she feels like this is a determined effort to eradicate historical neighborhoods. She is also worried about the sustainability of the neighborhood because her community is being flooded out and the city is not repairing shoreline. The same human rights her mother was fighting for, Mary continues to fight for. Her community does not want to be a line of mention in a history book, but they desperately need infrastructure dollars to solve their flooding issues.

Commenter Name: Angela Harris, Newport News, VA

Commenter Organization: Southeast CARE Coalition

Angela Harris thanked previous speaker Kelly Hengler. She applauded the air monitors that were installed in Newport News. She recommended Dr. Erica Holloman's dissertation on the community. There will be a unity meeting on October 15th at the Main Street Library. She exclaimed on the urgency of environmental justice and encourages everyone to pay attention to air monitors that were installed in Norfolk and Newport News. She invited the council invited to a toxic tour of Newport News. She also wanted to raise awareness about the Charles City Coalition.

Public Comments Received at VCEJ Meeting on November 15, 2022

Commenter Name: Emma Kelly, Rosehill, VA

Commenter Organization: Appalachian Voices

Emma Kelly advocated for southwest Virginia to move away from coal mining and to move towards procedural justice. She mentioned that the current governor's administration has announced 10 million dollars to develop an energy hub for carbon capture and nuclear reactor without community input. Southwest Virginia has been exploited and excluded from economic justice discussions. In a continuation of being excluded, a new Inter-Agency Task Force under the Sec. of Commerce and Trade only is meeting twice in the community. Kelly would like the task force to meet more than twice for more adequate public input. She feels that the VCEJ should recommend how the governor's administration should have more participatory processes and recommend mechanisms on how investments can benefit the community.

Commenter Name: Pamela Brandy, Pughsville Community in Chesapeake and Suffolk, VA

Pamela Brandy shared concerns about the lack of drainage and flooding in the community. Residents are dealing with flooding on a regular basis to the point that sometimes they are unable to leave their neighborhood. An additional concern is the lack of sidewalks and potential toxins in the water.

Commenter Name: Carolyn White, Pughsville Community in Suffolk, VA

Carolyn White mentioned that she was in favor of Kelly Hengler getting additional information and communication from the council. White is willing to provide documents, photos and any narrative to help to resolve the community's issues. She also mentioned that Suffolk had a developer put in a retention pond, but Suffolk has not put in new pipes to run the water out of the neighborhood. Flooding remains an issue and the community needs assistance.

Commenter Name: Kelly Hengler, Executive President

Commenter Organization: Hobson Civic League, Pughsville Community

Kelly Hengler talked about I-664 corridor concerns. She felt that there are so many corridors and proposed corridors that the community would like a hotspot analysis from the EPA. Hengler said that hotspot analyses are required to be done, but one has not yet been done for the area. There are community concerns about stopping emergency vehicles and idling truck impacts on air quality.

The community thinks that they can work together to operationalize policies. The Hobson Civic League is not anti-development, but their community is now overburdened. They would like to mitigate and prepare in advance, not after the cumulative impact is worsened. They would like transit options and other mitigation options before additional development. A Chuckatuck Creek survey is being completed and thus far it has found that shellfish quality has worsened. They are currently under a watershed improvement plan with DEQ. Hengler finished her comments by also appreciating the VCEJ.

Commenter Name: Jonathan Bier, Pound, VA

Jonathan Bier, in regard to the proposed nuclear reactor for southwest VA, is disappointed that there was no public input process for the decision. He mentioned that there is no place for nuclear waste generated by the facility and that there is already have enough pollution. He encouraged the council to use its power in opposition of the nuclear reactor.

Appendix C. Consideration of Effects to the Brown Grove Residential Community Historic District Wegmans Food Markets, Inc., Warehouse and Distribution Center Browns Grove Letter, Hanover County, Virginia, September 2021



September 23, 2021

Todd Miller, Chief
Southern Virginia Regulatory Section
Regulatory Branch
U.S. Army Corps of Engineers, Norfolk District
Richmond Field Office
9100 Arboretum Pkwy, Ste. 235
Richmond, Virginia 23236

Ref: *Consideration of Effects to the Brown Grove Residential Community Historic District Wegmans Food Markets, Inc., Warehouse and Distribution Center Browns Grove, Hanover County, Virginia ACHP Project*
Number: 17393

Dear Mr. Miller:

The Advisory Council on Historic Preservation (ACHP) was recently made aware of concerns from consulting parties regarding the measures proposed by the Corps of Engineers, Norfolk District (Corps) to address the adverse effects of the referenced undertaking on the Brown Grove Residential Community Historic District (BGRC HD). A Memorandum of Agreement (MOA), developed to comply with Section 106 of the National Historic Preservation Act and its implementing regulations, "Protection of Historic Properties" (36 CFR Part 800), was executed in May 2021, to resolve the referenced undertaking's effects on historic properties. However, the BGRC HD was determined eligible for inclusion on the National Register of Historic Places (NRHP) by the Corps in consultation with the Virginia State Historic Preservation Officer (SHPO) after the execution of the MOA. Representatives of the Brown Grove community have objected to the measures proposed by Wegmans Food Markets, Inc. (proponent) and the Corps to resolve the adverse effect, which are limited to information sharing and other support for documentation of the historic district. Community representatives have urged the Corps to consult further with the community to realistically assess the nature of the effects on the historic district before proposing measures to address the adverse effects. They have also requested that the Corps consider the effects of the undertaking in terms of its responsibility as a federal agency to address economic and environmental justice (EJ) issues.

To assist the Corps in responding to these requests, the ACHP offers the following comments, which are intended to acknowledge the Brown Grove community's observations, as they are the primary stakeholders most closely associated with the historic district who recognize and ascribe significance to the property and who have the clearest understanding of its importance. Accordingly, we believe that the Corps should take additional steps to consider and address how the undertaking may affect the historic district and affect the ways that members of the community experience the historic district. We provide additional details in the following.

Context

While the ACHP did not participate in the Section 106 review for this undertaking, we understand there are concerns regarding the undertaking's effect on the feeling, association, and setting of the BGRC HD and the ability of it to continue to convey its significance to the community, which interacts with it on a daily basis. There are also concerns regarding the potential for disturbance to unmarked burials that could include those associated with ancestors of members of the community, individuals who were enslaved on local farms in the vicinity, and freed slaves who helped establish the community. Issues of concern referenced by the community include effects from lighting, noise, air and ground water pollution, and traffic safety issues associated with the projected increase in traffic including tractor trailers making deliveries to and from the distribution center, and 700 plus employees commuting to and from work at various shifts on the rural roads in the community. In an effort to address the traffic concerns, we understand that the proponent made some adjustments to its proposed facility layout and traffic plan related to the routing of the tractor trailers and the primary access for employee parking.

The consultation was challenging for all participants, particularly due to the Covid-19 pandemic, the age and health of some of the community members who wished to participate, the limited experience of community members for participation in the various review processes underway, and the difficulties that federal, state, and county government agencies, project proponents, and their agents sometimes face when attempting to engage in meaningful communication that facilitates stakeholder confidence. However, the review process continued, the MOA was finalized and executed in mid-May of 2021, and the Corps issued a permit in mid-June. The MOA specifies measures to mitigate the adverse effects to an archaeological site and also requires further research on and preservation in place of the Brown Grove School site. The agreement also sets forth a protocol for further efforts to locate unmarked burials, utilizing assistance from community members as available. We understand that the proponent and the Corps recently held a site visit for community members to further consider areas with potential for unmarked burials. Stipulation II e. of the MOA also requires the proponent to consult with members of the Brown Grove Community to support and assist with the completion and submission of a Preliminary Information Form (PIF) to the SHPO, as a basis for formal evaluation of eligibility of the Brown Grove School site and the larger Brown Grove Community for inclusion on the NRHP. As such, the MOA acknowledges the potential for the presence of an historic district. As we understand, the question of the possibility of an historic district came up early in the consultation, at the first consultation meeting, but was not formally pursued.

However, prior to the execution of the MOA, community members and other interested stakeholders, on their own initiative, carried out research and developed a PIF, which was submitted to the Virginia SHPO. On June 29, 2021, the SHPO shared with the Corps and consulting parties its recommendation that the BGRC HD was eligible for listing in the NRHP at the local level of significance under Criterion A (Ethnic Heritage: African American; Religion; Agriculture; Commerce; Education) and Criterion D (Archaeology – Historic – Non-Aboriginal) with a period of significance of c. 1729-c. 1971. On July 30, 2021, the Corps concurred with the SHPO's recommendation and determined that the undertaking would have an adverse effect on the historic district. The Corps also shared a proposal from the proponent for the resolution of adverse effects to the historic district. While the SHPO opined that the mitigation proposal was generally consistent with expectations regarding mitigation, it encouraged the Corps to consider comments from consulting parties, especially from the Brown Grove community, regarding an appropriate mitigation strategy.

Shortly afterward, the Environmental & Climate Justice Committee Chair (ECJ Chair) for the Hanover County NAACP, who is providing assistance to the Brown Grove community, shared with the Corps its opinion that it was not possible to develop a mitigation plan for effects to the historic district without having a clear understanding of the adverse effects that the proposed mitigation was intended to address.

It requested that the Corps develop an assessment that clarified the nature of the effects to the historic district in consultation with the community. While acknowledging receipt of this correspondence, the Corps did not respond to its content. Rather, it sent an email on August 30, notifying SHPO and consulting parties that it had received no suggestions for modifications to the mitigation plan, and therefore approved the proponent's proposed mitigation plan for the effects to the BGRC HD. That plan requires that the proponent share with the community information about property ownership, chain of title, and other research that it is already required to carry out under the terms of the MOA; record all clearly visible paths and trails currently crossing the undertaking's location using appropriate GPS equipment; and establish a small fund to support research and documentation of the architecture and history of the community.

ACHP Advisory Comment

Because the historic district was not definitively identified as an eligible historic property prior to the execution of the MOA, it was treated by the Corps as a post-review discovery under the MOA's terms, although the Corps did not require adherence to the 48-hour time limit specified in the MOA for consulting party comment on such "discoveries." Following the Post-Review Discovery stipulation is standard procedure once an agreement document is executed. However, in reviewing the information available to us, it is unclear why the potential for existence of an historic district was not more fully explored during the Corps' effort to identify historic properties in the Area of Potential Effects (APE) for the undertaking prior to execution of the MOA. That omission may be the result of the Corps' adherence to the narrower scope of investigation required by its own Appendix C ("Procedures for the Protection of Historic Properties") of 33 CFR 325 ("Processing of Department of the Army Permits"), protocols developed by the Corps for compliance with Section 106 for its regulatory program, that are not consistent with the Section 106 implementing regulations and have never been approved as an alternative, as required by the statute and the Section 106 implementing regulations.

One of the flaws in Appendix C is that it suggests that the Corps can restrict its review outside its permit area to previously identified historic properties. In this case, the Corps did expand the permit area to include the entire project parcel, and also considered the potential visual effects to the Brown Grove Church, which is outside its permit area but directly across from the proposed development. The Corps may have assumed that any historic district would be comprised of properties located outside the development parcel and therefore, under Appendix C, it had no obligation to further consider the issue. The Corps may also have assumed that the houses of community members and other potential components of a potential district were too dispersed, lacked unifying themes, and were challenged by the encroachment of modern development. However, such assumptions and Appendix C notwithstanding, it seems reasonable that in this case the Corps should have given more serious consideration to the existence of an historic district, as apparently suggested by stakeholders early in the consultation process, in order to meet the reasonable and good faith standard required of a federal agency in the identification effort.

We also note that the Corps, in considering and approving the proposed measures to resolve the adverse effect to the historic district, is treating the BGRC HD as a static resource, as a property that may be significant to the community based solely on events that occurred there in the past, and not because of ongoing cultural use, values, and connections. Effects to such resources from development are typically resolvable, and often addressed through avoidance, minimization, or mitigation measures that might include research, documentation, and memorialization. As the Corps knows, a federal agency takes into account effects on historic properties from the undertakings it sponsors, assists, or authorizes, by carrying out a Section 106 review, and developing measures to resolve adverse effects to historic properties, in consultation with consulting parties. When the federal agency executes a Section 106 agreement that incorporates those measures, the adverse effects to historic properties are, by definition, resolved. The ACHP is aware that the Corps considers adverse effects that have been resolved through such an

agreement to be “neutralized”, as demonstrated in Table 9 of the Corps’ Environmental Assessment for the undertaking; we further understand that the effects to historic properties are therefore considered by the Corps to be “neutral” in its decision-making process. We would remind the Corps that, unless totally avoided or minimized to the point that the effect is no longer adverse, the adverse effect, though formally resolved, still occurs. The loss of historic properties is typically of great concern to those who ascribe significance to them and they cannot be replaced, whether by compensatory mitigation or otherwise.

The ACHP would urge the Corps not to treat the BGRC HD as a static property, disconnected from the living community that still ascribes significance to it. The significance of the BGRC HD is inextricably linked to the community’s living, ongoing experience of the historic district and their sense of place, through activities at the church, family gatherings, community celebrations of holidays like the Fourth of July and Juneteenth, and day-to-day interactions among community members whose families have been in community for generations. The ACHP also notes the apparent rarity of such a district being represented in the NRHP. As suggested by a consulting party, the BGRC HD may be one of only two historic districts focused on communities developed by Free Blacks in Virginia, where the descendants of formerly enslaved founders stand to be the most impacted by the development project. As the people that most closely associate and interact with the historic district, the community members have the clearest understanding of its importance. Accordingly, the Corps has an obligation to consider measures to resolve the adverse effects that address the community’s concerns as well as the broader public’s interest in the historic property. The Corps should consider how additional measures to resolve adverse effects could more meaningfully address the visual, audible, atmospheric, and physical intrusions into the setting, feeling and association of the historic district which is inextricably linked with everyday community life. To the extent that the effects to the setting and context of the historic district are not avoided and minimized, it is possible that the living historic district will be degraded to a static one and lose entirely its ability to convey its significance to anyone. Focusing solely on documentation of the resource does not address the potential for degradation of the historic district’s dynamic connection to the community.

The ACHP understands that representatives of the community have requested that the Corps also consider the undertaking’s effects to the historic district and the community as it relates to the federal agency’s responsibility to consider environmental justice (EJ). As is often the case, the issues frequently of concern in EJ converge with a federal agency’s responsibility to take into account effects on historic properties. Yet, it appears that the Corps’ protocols for decision-making in its permit review restrict its ability to seriously consider EJ issues and concerns related to effects on historic properties from permitted undertakings. In its EA for this undertaking, the Corps suggests in its review of the proposed new project that it has not considered the existing development in and around the Brown Grove Community, and therefore the BGRC HD, including the construction of significant infrastructure such as I-95, a local airport, a landfill, a concrete plant, and an industrial park. Nor did the Corps consider how those earlier developments may have resulted in incremental and cumulative alterations to the setting and context of a community with historically limited ability to resist such development that creates the context for the Corps’ current permit and Section 106 review. We urge the Corps to take such issues and factors into account when considering effects to historic properties, and importantly so as part of its efforts to consider impacts under EJ, and to consult further on ways to avoid, minimize, and mitigate such effects. Our advice is based on recent Executive Orders and Presidential Memoranda that emphasize a ‘whole of government’ approach that makes EJ a part of every federal agency’s mission. In this context, it might be appropriate for the Corps and the project proponent to focus on minimizing the undertaking’s audible, visual, atmospheric, and traffic effects that will have the greatest impact on the community and on the historic district.

In conclusion, the ACHP recommends that the Corps work closely with the community and the project proponent, as exemplified by the recent site visit to consider the potential for unmarked burials, in further identifying the eligible historic district’s significance and applicable elements of integrity, and developing a more appropriate mitigation plan to address the undertaking’s effects on the historic district. The ACHP

provides this guidance under 36 C.F.R. § 800.9(a) to assist the Corps in complying with the Section 106 implementing regulations and meeting the spirit of its responsibilities related to EJ for this undertaking.

Should you have any questions or wish to discuss this matter further, please contact John T. Eddins, PhD at 202-517-0211, or by e-mail at jeddins@achp.gov.

Sincerely,



Jaime Loichinger
Assistant Director
Federal Permitting, Licensing, and Assistance Section
Office of Federal Agency Programs

**Appendix D. Interested Party Comment from Union Hill Freedmen Family Research Group:
Army Corps of Engineers, Wegman's Distribution Center, MOA for Brown Grove Baptist
Church, May 2021**

Todd Miller and Elaine Holley
Col. Patrick Kinsman
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Army Corps of Engineers

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Union Hill Freedmen Family Research Group
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May 6, 2021

Interested Party comment: Army Corps of Engineers, Wegman's Distribution Center, MOA for Brown Grove Baptist Church

We disagree with the Army Corps of Engineers (ACE) final determination of "no effects" by the Wegman's Distribution Center facility on the National Historic Register and Virginia Landmark eligible Brown Grove Baptist Church (DHR Inventory No. 042-5779).

We contend that because ACE as a federal agency has yet to conduct a NEPA Environmental Assessment-EA, this MOA is missing the most important evidence needed to assess the many types of specific Wegman's facility impacts on the Church's operations, the traditional cultural practices for which this site was designed and has been continuously used since 1870. Taken together with our concerns about the disproportionate adverse health, economic, and social cohesion impacts of Wegman's operational activities on the historic African American Brown Grove community -- shared by the hundreds of public commenters focusing on the environmental justice issues of the Wegman's Virginia Water Protection Permit -- we strongly request that the ACE:

1. MOA: Take a pause on issuing a final determination of impacts on the historic Brown Grove Church based on the lack of key environmental impacts evidence; and, the MOA's lack of defined responsibilities and duties of the developers if this facility is built about the presence of human remains: A. Establish what accredited professional will be on-site to oversee operations for the presence of human remains; B. The methods by which the remains will be returned to the community; and C. The means by which all reasonable costs of reburial will be financially borne by Wegmans;
2. Immediately begin their EA of the Wegman's facility site -- its entire built environment -- and the entirety of its operations and their quantified adverse impacts; and
3. Commission a NEPA Environmental Justice Review (under the Biden administration, now returning to the 2017 Guidelines) to be undertaken by independent experts.

Most critical to the veracity and validity of both studies is the active participation of Brown Grove community members, some of whom are consulting parties on this MOA, among others -- who are the site-based experts with cultural knowledge of each type of necessary community evidence needed to analyze, quantify and address the health, economic, historic cultural resource, and socio-cultural cohesion impacts of the Wegman's site and operations on its impacted neighbors.

I. MOA Historic Preservation issues

Problems with assessments of historic significance and what counts as impacts

First, from a historic preservation perspective, ACE's conclusion of "no effects" must be denied on the very bases of the Brown Grove Baptist Church's historic significance. That is, its continuous 150+-year central role in the daily lives and activities of the formerly enslaved people who built it as the beating heart of a Free and Freedmen-built community and, to this day, in the lives of their descendants, the Brown Grove Black Heritage families. These historic community members are the nearest neighbors along the key site corridor required by the proposed Wegman's Distribution Center.

Deeply concerning in ACE's MOA determination is wording that divorces the church from its actual site on Ashcake Road, thus its historic and its present context. Discursively, this action has immense consequences.

By fracturing a Black Church building from its site, from its land usages and contextual environment, from its historic context, this action undoes the intentions and meanings of historic preservation of African American cultural resources in Virginia and the U.S. To conclude, as the Army Corps does in this MOA sent to us for comments, that the Wegman's facility is just a building that has "no effect" on another building across a "shared" 2-lane road denies the relevance of impacts reported in Wegman's application. The projections of their traffic usage of over 3,200 vehicle trips per day would be a monopolization of a shared historic cultural resource. Changing forever the character, experience, and even access to Ashcake Road that has been integral to church-going at Brown Grove Church for 150 years.

The concept of ethnographic cultural landscapes in Freedmen built communities in Virginia conceptualized by the author of this comment in the Union Hill Rural Historic District (granted eligibility in December 2020, Buckingham County, VA) includes recognizing the historic significance of the continuous usage of historic roads that still serve their traditional uses as connective circulatory arteries to link churches, cemeteries, schools, homes, farms, businesses, and other gathering sites which create and sustain community cohesion. These roads bring back "home" family members who migrated north during the Great Migration of the Jim Crow era segregation and return for yearly Homecomings and Black Church revivals. They serve as ritual sites for funeral processions whose unbroken lines of cars are an outward and visible sign of the tragic loss their death presents to the community. These ritual journeys from historic Black Churches to cemeteries and burial sites that remain the "only possible right place" for burials of even widely extended Black families throughout the U.S. are traditional cultural life-ways as worthy of preservation as New Orleans funereal practices, presidential corteges, and religious pilgrimages to sacred burial sites associated with Christian, Muslim, Hindu, and Buddhist faiths.

The Brown Grove Church cultural landscape is a spiritual landscape, in which the Brown Grove Church School was an affiliated adjacent building built just across the road (on the site now owned by the Regional Air Park to be leased to Wegman's) by the community during segregation. Because in the Southern Black Church, one's baptismal church is your church for life, is the basis of one's chosen kinship perhaps because enslavement practices deliberately broke tribal, language, and familial kinship ties. Therefore, the education of the congregation's children under Jim Crow segregation was the duty and responsibility of the Black Church community as a whole. We see this same interlinked church/school site pattern in Union Hill, where the church-affiliated segregated schools built by the Union Hill Baptist Church community and the Union Grove Missionary Baptist Church are right across the road. These roads were not asphalt highways but dirt roads when built, then gravel.

The family burials of deep concern to the Brown Grove Black Heritage families whose oral histories locate them near the Brown Grove School site may precede the building of the school, or may be related to traditional cultural practices to locate burials where then living relatives can visit them.

The entire area of the former school site must receive close attention in an EA, well before any construction begins if this facility receives its approvals, and not during construction only. A technique that is gaining favor where ground penetrating radar does not produce the best results is to do cloud point scanning – which creates 3-dimensional images of the ground surface that gives visual evidence to often hidden regular depressions in the ground of unmarked burials. The EA and then MOA must include direct input from the descendants of the founders of this community, with the MOA to include their decisions about exactly what they want the developer to do to memorialize this site if they cannot protect it from harm.

Faulty Methodology

Overall, methodologically, this MOA creates false building-wall-to-building-wall boundary lines to assess the impacts of the one site on the site of the other. In particular, it erases the historic role of this corridor on which the Free families of Brown Grove built their church, and the role the road plays today in the activities of the church as a place of worship and community center. Neither site would be built where they are without access to Ashcake Road, a historic road once dirt, then gravel, now paved with access to Rt. 95, whose designers bifurcated historic Brown Grove.

We deem this methodology faulty also because it erases the architectural site design intent of the Brown Grove Church’s builders in 1870, its later rebuilding design after a fire, and the Wegman’s facility architectural site design now – as built environments meant to locate the activities for which they are built. All of which include both inside and outdoor built environments to accommodate the operational components of those activities.

The Brown Grove Baptist Church and its cemetery, outdoor activities areas, parking lot and entrance and exit onto Ashcake Road embody the built environment of the Church’s operational activities. These reflect architectural designs as site planning that include where to place doors, access ramps, windows – that connect the Church’s inside and outside activities. To divorce the outside built environment as if somehow not integral to the activities of the Church must be denied validity in historic preservation of sites used continuously for the same traditional cultural activities, as exemplified by Brown Grove Baptist Church.

In the comments submitted by Brown Grove consulting parties, Diane Smith Drake and her parents, Renada Harris and her parents, Bonnica Cotman, Kim Washington, Melvinia Wilson, Deshanda Artis, and more, they describe in specific detail the activities of the Church that will be negatively impacted by the endless Wegman’s traffic, by 24/7 365 high levels of engine noise that will overpower their church music inside and outside, talk at outside gatherings, the destruction of the night-sky by bright light pollution, and their accompanying harms to physical and mental health, produced endlessly by this facility operating so close by. To divorce these activities as not related to the preservation of the historic Brown Grove Church denies these as the activities and practices of freedom, creative arts of living under continuous oppression and racial discrimination, with resiliency, community uplift and joy, from 1870 to today.

These photos from the PIF-Preliminary Information Form submitted to the Virginia Dept. of Historic Resources locate how integral a part of the historic Brown Grove Church is its location on Ashcake Road. Also indicated is Slash Church, another Brown Grove eligible Black Church.



Brown Grove Baptist Church and its current parking lot design, with separate exit and entrance onto Ashcake Road:



ACE's use of an historic preservation lens that privileges the Brown Grove Baptist Church's architecture that ends at its walls also erases the context of the founding of this historic church. A gift of 18.2 acres of land by Carolyn Morris, a formerly enslaved then Free woman, can hardly be fathomed today for its level of generosity to her community. Who, with six Free families founded and built a church where they could worship freely for the first time. Without the oppression and surveillance by their White owners experienced by enslaved people who were often the majority of congregants in the White churches of their owners. Where, in archives and oral narratives, such as from Charles White's book, *The Hidden and Forgotten: Contributions of Buckingham County Blacks to American History* (1985), we find formerly enslaved people's reports to their families of being punished for using African rhythms in the singing and movements during White church services.

No one who has participated in the worship services and activities of a Black Church is focusing on the architectural details, except as they reflect back the loving care and economic investment of people for whom this church is the embodiment and celebration of freedom. Freedom to choose what windows they can raise funds for are a reflection of the experience of freedom after hundreds of years of living under most the intensive, long-term system of total oppression of a specific ancestral people in the history of humankind.

II. & III. Environmental Assessment Impacts and Environmental Justice Review: Health Impacts on the Brown Grove Church within a Shared Operational Landscape with the Wegman's facility

Our request that ACE immediately commence a required NEPA EA and its relevance to this MOA is based on the evidence of its operations submitted with the Wegman's Virginia Water Protection Permit to the Virginia Dept. of Environmental Quality and the VA State Water Control Board. We conclude that ACE's final determination of "no effects" in this MOA reflects the fact that ACE staff is uninformed in this decision by the scientific and community data they would uncover on the impacts of this facility's

operations after an EA to “to identify, estimate and evaluate the environmental impacts, identify alternatives, and consider a ‘no-action’ alternative of the proposed project, and to provide stakeholders with a list of individuals and agencies consulted.”

What is a No-action alternative? “In other words, would the environment be better off if the action is not taken compared to all of the other alternative actions? All of these options are viewed in terms of potential impacts, with a ranking or comparison of the alternatives, and a recommendation to decision makers on how best to implement the proposed program with the least environmental implications”

<https://www.sciencedirect.com/topics/earth-and-planetary-sciences/environmental-assessment>

In this case, the project is a 1.6 million square feet distribution facility site where they propose 24/7 365 daily operations. Without the EA findings to identify those operations and associated activities by personnel, without arriving at alternatives, and recommending the “least environmentally impactful solution,” their impacts on the Brown Grove Church and its operations and activities at this historic site – the MOA is missing the most important evidence needed.

For, the very operations of the jobs so touted by the White majority county leaders and by Virginia’s governor that would constitute their occupational activities at this Wegman’s Distribution Center will create continuous noise, light, and PM2.5 emission pollution that without doubt will create new source cumulative harms to the descendants of the Church founders and entire community of Brown Grove. Practicing their religion, following traditional and current uses of the Brown Grove Church. The jobs for which the facility would be built will cause immense scientifically documented individual, familial and community harms to the lives, uses of their land, health and cohesion of the Black Heritage community of the other.

In particular, directly across the street from the Brown Grove Baptist Church’s 18.2-acre site is the proposed Wegman’s employee parking lot, where the 700 proposed employees would enter and exit twice a day, contributing over 1400 daily new vehicular traffic uses of Ashcake Road right where the Church’s congregants need to turn into their Church’s parking lot.

The over 3,200 additional vehicles proposed by Wegman’s as potentially using Ashcake Road are by greatest proportion, diesel emitting tractor trailers whose trips into the facility and trips out of the facility also include idling while parked and waiting to be unload and loaded. As recently reported in major newspapers throughout the U.S. last week, five scientific studies of the siting of toxic pollution in the U.S. all independently conclude that Black Americans have historically and continue to live nearest to the highest source emissions of PM2.5 (smog) -- along with every other toxic polluting, mortally dangerous chemical emitted, no matter their income [Americans of color are ‘disproportionately and systematically’ by deadly air pollutant, new scientific study finds - The Washington Post](#)

We, the allies of Brown Grove Community, join in asking the family built grocery chain of Wegman’s to understand their plight and its place in the context of restoring environmental justice to over-burdened Black communities. Please choose an alternate site in which to build. To be a contributing part of the change we want to see in Virginia to stop choosing to locate the most toxic polluting infrastructure where it will most impact the historic lands, health, and community social cohesion of Black people descended from enslaved people, most often enslaved nearby. How does that happen? Not by chance. It happens in each permit process, each ACE decision, each White majority county or each state elected leadership’s lack of willingness to stop this system of oppression.

Very sincerely,

Lakshmi Fjord

On behalf of the Union Hill Freedmen Family Research Group

The Reasons We Advocate

A Presentation to the

Virginia Council on Environmental Justice

By The Clinch Coalition
est. 1998

Southwest Virginia: A Low-Income Community

- 51% of households in Southwest Virginia either lived in poverty or were ALICE, an acronym which stands for Asset-Limited, Income-Constrained and Employed. That's compared to 39% of households statewide.
 - Source: [United Way of Southwest Virginia, December, 2020](#)
- Appalachian Virginia has rates of heart disease, cancer, diabetes, opioid addiction and other health conditions much greater than non-Appalachian Virginia.
 - Source: [Appalachian Regional Commission](#)

Our mission is to protect and preserve the forest, wildlife, and watersheds of our National Forest and surrounding communities for present and future generations.

Stewardship

The Clinch Coalition contacts the Virginia Department of Forestry, which has oversight of logging operations on private lands, when citizens complain.

Logging is allowed in state forests, however, there are no state forests within the Southwest Virginia area that we monitor. Logging is not allowed in Virginia's state parks.



Commonwealth of Virginia says:

Virginia's forests are under increasing pressure to provide an array of critical services to citizens and the nation. **The most obvious benefits are productive jobs, strong communities, and excellent environmental health--including clean water and air, bio-energy, habitat, and buffers for climate change.** We strive to equip forest landowners with the information and knowledge to sustainably manage their forests for current and future generations.

Economic Transition to Tourism

With the decline in coal mining, the emphasis is to transition to a tourism economy. Clearcutting of our beautiful forests, currently happening within sight of High Knob, blights the scenery that is being promoted.



Scenic Resources

“Communication with property owners about the role of the views along scenic corridors in terms of business development and investment is the first step in furthering the vision for entrance corridor improvements. Other steps include consideration of various incentives for land conservation, as well as potential regulatory approaches.”

- Source: High Knob Regional Initiative

Master Plan



Need for Stronger Regulations

The Clinch Coalition is concerned that the Department of Forestry (VDOF) lacks sufficient authority to provide “excellent environmental health” when the clear cutting of our forests occurs by private logging operations.

“Primarily, VDOF is not a regulatory agency...”

- [Source: 2020 Environmental Justice Interagency Working Group Report](#)

Recommendations for Stronger Logging Regulations

- An application and permit process could be put into place.
- A NEPA-type process could be put in place to ensure state and federal listed endangered species be protected.
- Best Management Practices (BMPs) should be requirements, not recommendations.
- Loggers should have to follow more environmental laws other than the Clean Water Act.
- Logging impact on neighbors and communities need to be assessed.
- The Commonwealth should look into Forest Banking for forest management.

- In recent years, TCC has fielded an increasing number of complaints from local residents about stream pollution and property damage from erosion and sedimentation on the Spearhead Trails network
- 600+ mile off-road vehicle trail system managed by a state government entity (Southwest Regional Recreation Authority, or SRRA) and funded annually by the General Assembly
- Trails within the SRRA network have been developed within economically-distressed communities across five SWVA counties

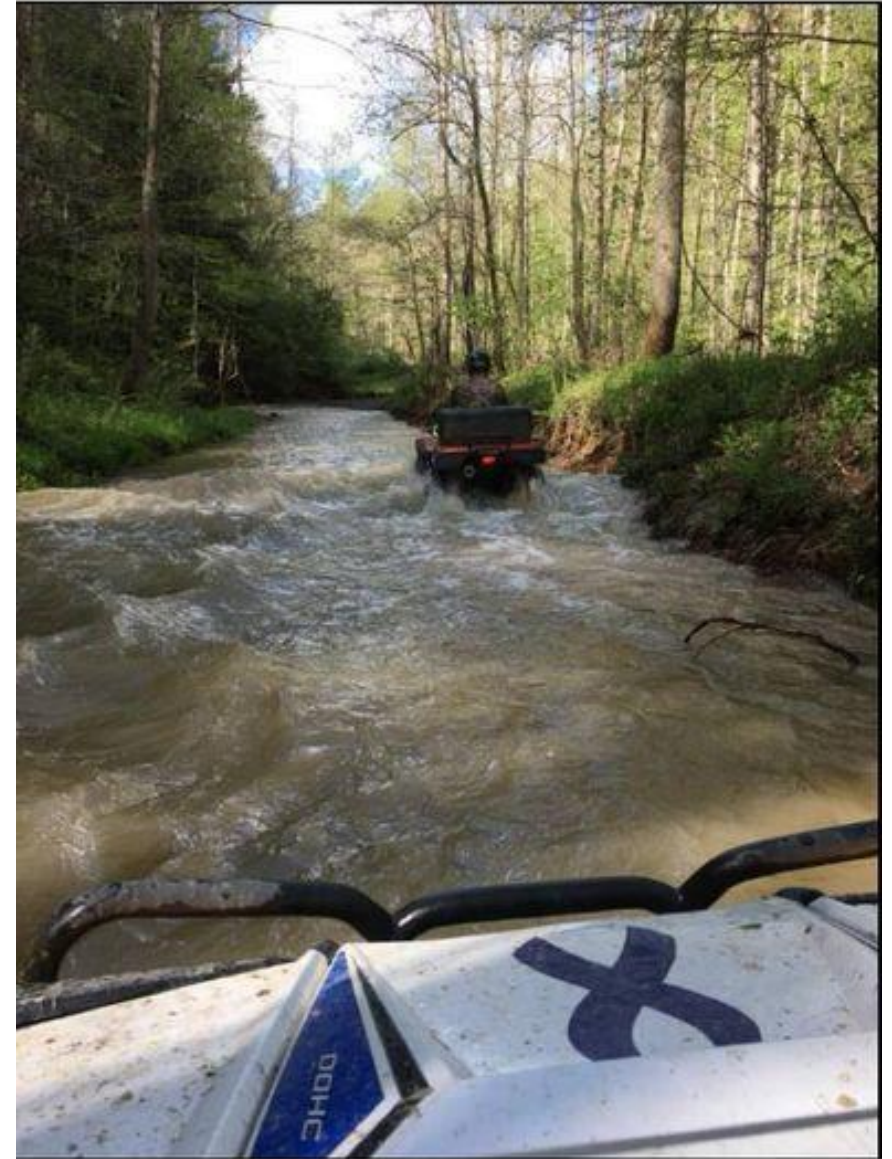


Local Concerns About State-Managed Recreational Trails

~1mi of Haynes Branch excavated into an ATV route on state-owned property
(Tazewell County, impaired watershed in New River drainage)



Large section of Barts Lick Creek (Russell Fork drainage) signed as official state ATV route in Dickenson County upstream of Breaks Interstate Park (Nature Conservancy property)



Below: Gov. Northam being driven through wetland area during a VIP tour of the trail network (Virginia City Hybrid Energy Center property)

To right: Isolated wetlands converted into ATV play areas above St. Paul, Virginia (Nature Conservancy Property)

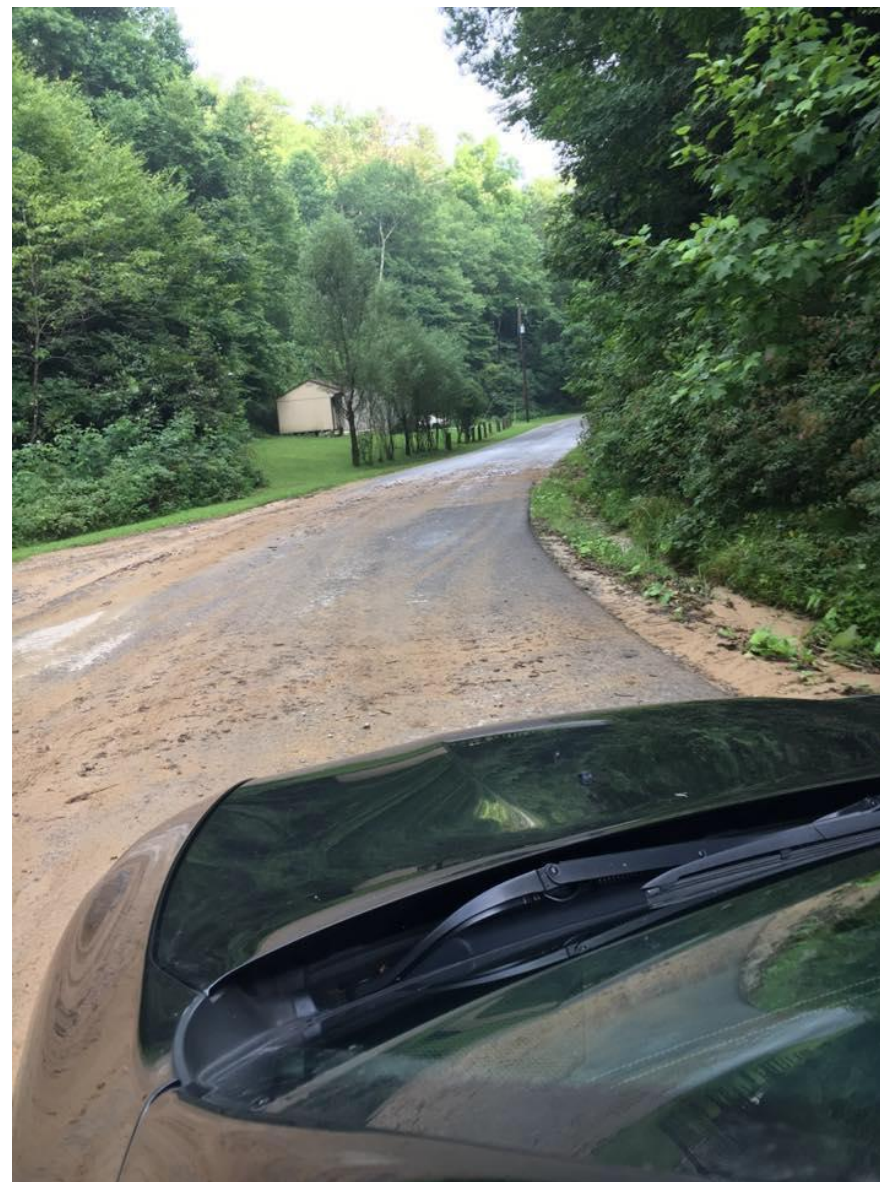


- *“One time I stopped by (my family cemetery, located on trail network) and **my blood was boiling because someone had drove their 4 wheeler right on top of my dad's grave.** A lot of the graves are from late 1800s to early 1900s.”*
- *“The trail is in my backyard...The night riding, destruction of property, and trash is a constant problem over here. **No one wants to own any type of responsibility at all for anything. I have been promised the world (in response to complaints) and very little progress has been made.**”*

- *“We have so many things wrong in the area I live in that the Spearhead trail has caused. Flooding is a major one. Flooding to the point where banks in peoples yards actually washed away. **People have had to dig trenches in their yards, have to dig out the ditches beside the roads themselves** and let’s not forget the mud and silt mess that we drive through daily...*
- *...Not only is the property impacted, but the peacefulness of living here is slowly dying. They (officials) treat you like the people who have lived there for years don’t realize the change happened when trails were cut.”*



- *“This is the second evening of nasty runoff from the ATV trails in The Hollow. Be thankful you do not live close to these trails. We deal with this every time we have heavy or extended rain. **We never had this runoff problem until these trails were cut. The residents...don't seem to matter.**”*
- All residents stated that they had contacted state or local officials in unsuccessful attempts to have issues addressed before contacting TCC or were hesitant to file complaints themselves due to fears of retaliation.



Possible Legislative Solutions to Regional Concerns

- Core Issue: Many state authorities' operations in SWVA are shielded from public view and exclude citizens from decision-making processes
- SRRA does not routinely seek public comment for proposed projects, make trail development plans available for public review, or even publicly disclose the identity of its board
 - Clear guidelines are needed from the General Assembly establishing mechanisms for public input and requiring transparency in state authority operations
- Regulatory agencies are hesitant to enforce Virginia's environmental laws on state-funded projects, even when violations are discovered, since doing so would amount to the state engaging in enforcement action against itself.
 - The Commonwealth should clarify that environmental regulations apply to all public entities and ensure that enforcement for violations is consistently applied



Public Health and the Environment

- Coal mining brought good Union wages and benefits for a few decades, but it has always been a boom or bust industry that leads to out-migration which continues today.
- Strip mining, mountaintop removal and abandoned mines have left the landscape scarred and devastated.



“Work is underway on multiple sites along the Lynn Camp Creek area in Buchanan County, Virginia. These Abandoned Mine Land (AML) features are considered a danger to 22 nearby homes and also an environmental concern to the community. An AML grant of \$699,108.50 will repair a host of concerns including landslides, drainage issues and closing old mine openings.”

- *VA Department of Energy (DMME) Press Release*

– October 4, 2021





The Russell Fork is listed in DEQ's 305(b)/303(d) report as impaired for failure to support the recreation use due to exceedances of the water quality standard for bacteria. Currently, there is no TMDL (Total Maximum Daily Load) for the Russell Fork

TMDL development is stalled due to current litigation with mining-related impacts.

[An article focused on Town of Pound from May 19, 2021](#), highlights the problems with the local sewer plant's inability to operate and untreated sewage flows out of the plant.

The town knew about this problem for years before it was deemed a disaster, having been put on notice by the DEQ in 2016.

Community Involvement is Crucial to Secure Environmental Justice

STATE WATER CONTROL BOARD Public Notice

An enforcement action has been proposed for the Dickenson County Public Service Authority for violations of the State Water Control Law at the Haysi Sewage Treatment Plant in Dickenson County. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Jonathan Chapman will accept comments by e-mail (jonathan.chapman@deq.virginia.gov) or postal mail (Virginia Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, Virginia 24210) from **May 25, 2021** through **June 24, 2021**.

Notice found in local newspaper one month later in neighboring Dickenson County.

Community Comments on Water Quality

- A Pound resident:
 - “For years, we have had people from the water agency come to our town council meetings and tell our board members that we need to repair our sewer system.”
 - A consent order was issued to The Town of Pound on January 5, 2016 per Department of Environmental Quality.
- In response to congratulating a co-worker on the purchase of a boat for recreation:
 - “Did you and the children take a swim while you were out?”
 - “Oh no, you don’t swim in the Flannagan. Did you not hear about the problem Pound had with their sewer?”
- After seeing the public notice in the newspaper and speaking with former local officials about the problems with the sewer system in Dickenson county:
 - “You don’t want to know about the problems with the sewer system!”

Advocating for the Community

The Clinch Coalition created a 'Leave a Tip' feature on our website in order to make sure community concerns were heard.

These tips were then passed on to the Virginia Department of Environmental Quality as a means of facilitating community involvement.

Comment on Pound River from 'Leave a Tip' on February 18th, 2021:

"I am concerned about the condition of the water in the Pound River. The number of fish in the river has dwindled to nearly nothing. I live way down South of the Mountain right on Pound River nearly on the Dickenson County line."

There is a scarcity of research on health and environmental factors influencing health, such as water quality, air quality, and more.

- Most data and programs focus on “lifestyle” health conditions without considering air and water pollution as contributing factors.
- “Health disparities that cannot be fully explained by socio-behavioral factors persist in the Central Appalachian region of the United States. Future efforts must engage community members in examining all potential sources of environmental health disparities to identify effective potential interventions.”
 - [Source: Environmental Health Disparities in Central Appalachian Region, 2017, by Leigh-Anne Krometis, Lead Author, Virginia Tech](#)

Recommendations for Addressing Public Health

- Funding for research to advance the knowledge base related to the effects of the environment on the health of citizens of Southwest Virginia.
- Provide adequate funding and resources to regulatory agencies to address current and long-standing deficiencies in enforcement of environmental policies and laws.
- Bring environmental justice to Southwest Virginia!

Appendix F. Recommendations by the Clinch Coalition to the Virginia Council on Environmental Justice, October 2021

Recommendations by The Clinch Coalition to the Virginia Council on Environmental Justice, October 25, 2021:

Recommendations for Stronger Logging Regulations

- An application and permit process could be put into place.
- A NEPA-type process could be put in place to ensure state and federal listed endangered species be protected.
- Best Management Practices (BMPs) should be requirements, not recommendations.
- Loggers should have to follow more environmental laws other than the Clean Water Act.
- Logging impact on neighbors and communities need to be assessed.
- The Commonwealth should look in to Forest Banking for forest management.

Recommendations for Transparency of the Southwest Regional Recreational Authority (SRRA) and Enforcement of Environmental Regulations

- Core Issue: Many state authorities' operations in SWVA are shielded from public view and exclude citizens from decision-making processes
- SRRA does not routinely seek public comment for proposed projects, make trail development plans available for public review, or even publicly disclose the identity of its board
 - Clear guidelines are needed from the General Assembly establishing mechanisms for public input and requiring transparency in state authority operations
- Regulatory agencies are hesitant to enforce Virginia's environmental laws on state-funded projects, even when violations are discovered, since doing so would amount to the state engaging in enforcement action against itself.
 - The Commonwealth should clarify that environmental regulations apply to all public entities and ensure that enforcement for violations is consistently applied

Recommendations for Addressing Public Health

- Provide funding for research to advance the knowledge base related to the effects of the environment on the health of citizens of Southwest Virginia.
- Provide adequate funding and resources to regulatory agencies to address current and long-standing deficiencies in enforcement of environmental policies and laws.
- Bring environmental justice to Southwest Virginia!

Appendix G. Office of Just Energy Transition Proposal from WISE

Office of Just Energy Transition Proposal

Mission: The Office of Just Energy Transition will increase the capacity of the Commonwealth to steward an equitable and just transition in communities negatively impacted by the downturn in the coal economy. The Office will:

1. Develop a community of practice that facilitates **preparation**, during which the groundwork is laid for a successful transition by planning and beginning to implement strategies to assist communities and workers.
2. Provide assistance during **closure**, during which Virginia's remaining power plants and coal mines close down. This will be the period of maximum negative impact to workers and local economies.
3. Steward a **recovery**, during which workers and communities complete their transitions to a future after fossil fuels and other carbon-emitting economies. For Southwest Virginia, recovery must begin immediately to address decades of coal industry decline; for other communities, recovery can begin now as communities get a head-start on diversifying their economies and workers start planning early to take charge of their own futures.

The Need: The Virginia Clean Economy Act mandates that the Commonwealth transition away from carbon-emitting electric generation, putting further downward pressure on fossil-fuel industries already facing decline as the electricity sector decarbonizes. As Virginia and the country rely less on fossil fuels, workers and communities historically reliant on fossil fuel production and infrastructure will lose jobs and tax revenue, further exacerbating the economic hardships faced in these areas. Coalfield communities have been experiencing the harsh reality of the declining coal industry for decades, and now more workers and communities across the entire Commonwealth will begin to experience this challenging economic transition. As we change the way we produce energy, Virginia has a responsibility to ensure that vulnerable communities are not left behind during the transition.

Action: The purpose of the Office is to (1) aid workers in the transition to new, high-quality, jobs, and (2) help communities continue to thrive by expanding and attracting diverse businesses, replacing lost revenues, and repairing the environmental damage of extractive industries. The Office of Just Energy Transition will collaborate with the Just Energy Transition Advisory Board and create a Just Energy Transition Action Plan. The Office will commission a study regarding the effects of power plant and mine closures to inform the Action Plan in order to better assist workers and communities that will be adversely affected by the loss of jobs and revenues due to the closure of coal-fired power plants. The Advisory Board should include representatives of coal communities, labor unions, regional nonprofits, issue experts, and members appointed by the Governor. The Advisory Board should lead the drafting of the Action Plan, which must be developed in consultation with stakeholders in impacted communities, within two years after the establishment of the Office, and must be updated every three years. The Action Plan will address the Office's plans for each bullet listed below.

The Office of Just Transition is responsible for:

Administrative

- Administering the Just Energy Transition program and the development and implementation of the Just Energy Transition Action Plan for Virginia.
- In coordination with the Department of Energy, monitoring the timing and location of facility closures and job layoffs in fossil-fuel-related industries and making recommendations for how to most effectively respond to these economic dislocations.
- Engaging in administrative proceedings that are relevant to the purposes of the Office, including matters before the State Corporation Commission and Department of Environmental Quality.
- Developing realistic options for further state support of just transition strategies. Recommending to the General Assembly and Governor legislative changes that would allow the Office to better achieve its purpose.
- Administering a mitigation fund to provide assistance for communities facing closures, including assistance with loss tax revenues and wages, in coordination with the Department of Social Services, the Employment Commission, the Department of Labor and Industry, the Department of Professional and Occupational Regulation, the Department for Aging and Rehabilitative Service, the Economic Development Partnership, the Community College System, and the Department of Education.

Local Engagement

- Working with stakeholders in each impacted community to develop local plans and to inform the statewide Action Plan.
- Supporting the Just Transition Advisory Board.
- Targeting early successes in business start-ups, expansions, retention, and attraction.
- Empowering communities with resources to drive their own economic transitions.

Increasing Funding & Improving Programs

- Identifying funding sources and aligning regional, state, and federal programs, grants, and investments to assist local infrastructure projects and revitalization strategies.
- Identifying and funding environmental remediation efforts necessary to improving community health and attracting economic development.
- Working with state lawmakers, utilities, and mining companies to increase transition funding.
- Ensuring impacted communities have adequate health and social services to support a just economic transition, including access to education, transportation, health care, child care, mental health care, and addiction recovery care.

Appendix H. Coal Mine Reclamation Bonding and Reclamation Liability in Virginia Fact Sheet from WISE

Surface coal mines, coal processing facilities, and surface features of underground mines in Virginia are regulated through the Surface Mining Control and Reclamation Act (SMCRA). Enforcement of the law is delegated by the federal Office of Surface Mining Reclamation and Enforcement to the Virginia Department of Mines, Minerals and Energy.

SMCRA was intended to prevent coal mine abandonment through two key features: a requirement that all mines have reclamation bonds in place, and the implementation of reclamation standards. As the coal industry has declined, deficiencies in these requirements have become apparent. Normal enforcement mechanisms, such as monetary penalties or permit revocation, now mean little to coal companies that are no longer mining. In addition, bonding systems are proving insufficient to cover actual outstanding reclamation liabilities. This has resulted in a situation in Virginia and other states where regulators are reluctant to undertake escalating enforcement action, because the final enforcement action — permit revocation — would result in the state taking on reclamation liability at a permit for which there is not an adequate reclamation bond.

VIRGINIA BONDING SYSTEM

Virginia utilizes both full-cost bonding and pool bonding. The state also allowed some companies to self-bond through 2014, meaning companies give only their word, but no actual money, to guarantee reclamation.

There are some self-bonded permits that have neither been reclaimed nor had self-bonds replaced.

Virginia's bonds

- Full-cost bonding: coal companies provide a bond, either through a third-party surety company or through a bank, which should cover the full cost of reclaiming the mine;
 - This is considered to be the most secure form of bonding;
 - However, if bond amounts are not calculated adequately, the bond may not cover the true cost of reclamation;
 - In recent years, many bonds have been covered by a small number of surety companies operating in many states; there has been little oversight to ensure that these surety companies are not overextended.
- Pool bond fund: coal companies provide a partial permit-specific bond, and also pay into a state pool, which would provide a portion of the reclamation funding in the case of bond forfeiture;
 - The pool currently contains about \$10 million dollars, but covers liabilities at least 10 times that high;

- About 50% of permits participate in the pool bond, but these permits make up a disproportionate amount of total bonded acreage: 78%.

Virginia’s exposure to financially vulnerable surety bond providers

- The largest provider of permit-specific bonds in Virginia is Indemnity National Insurance Company, which has issued \$109 million in surety bonds in the state (approximately 40% of the total bonds in the state);
- Indemnity covers at least an additional \$1 billion across Kentucky, West Virginia, Pennsylvania, and Wyoming;
- Indemnity is highly exposed to mine abandonments from the Blackjewel bankruptcy in Kentucky and Virginia, as well as the ERP Environmental company receivership case in West Virginia.

Virginia’s self-bonds

- A&G Coal Company, owned by the family of West Virginia Governor Jim Justice, has 20 permits that are self-bonded, meaning no money is actually secured by the state or a third party for reclamation at these mines; most of these permits also participate in the pool bond fund;
- Outstanding reclamation at these mines was estimated to cost \$134 million according to state review of the mines in 2016;
- If this company fails, the full cost of reclamation will fall to the state and to taxpayers.

OUTSTANDING RECLAMATION AT MODERN MINES IN VIRGINIA

The following statistics cover modern mines that are currently still under a SMCRA permit and are still held by a coal company. In theory, reclamation at these mines should be completed by the company that holds the permit. But as more coal companies declare bankruptcy, fewer companies remain to take over mines, so the number of companies forfeiting bonds and deserting their cleanup responsibilities will only increase. Now, we may be facing a new wave of modern abandoned mines.

Reclamation needs in Virginia at mines currently held by coal comp

- 35,000 acres of current coal mines in Virginia require cleanup (this does not include pre-1977 Abandoned Mine Lands (AML) reclamation needs);
- Estimated cost of \$530-\$650 million;
- Total available bonds total \$250 million;
- Completing this reclamation could create 1,700-3,300 job-years.

Reclamation needs across the country

- 633,000 acres of coal mines across Pennsylvania, Ohio, West

Total Available Bonds and Outstanding Reclamation Liability in Virginia



- Virginia, Virginia,
Kentucky, Tennessee, and
Alabama require cleanup;
- Estimated cost of \$7.5 to \$9.8 billion for just the above 7 states;
- 255,000 acres across Wyoming, Montana, North Dakota, Colorado, New Mexico, and Arizona require cleanup.

Data from [Repairing the Damage: the cost of delaying reclamation at modern-era mines](#)

PROPOSED LEGISLATIVE ACTION

Virginia's bonding system has not been reviewed by a third party since 2011, when Pinnacle Actuarial Resources reviewed the state's pool bond. Actuarial analyses of state bonding systems are common, but often only consider historic trends in coal production, bond forfeitures, and reclamation costs. Such a methodology is inadequate given the rapid changes in the coal industry at this time.

We suggest an audit of the Virginia coal bonding program, which should include:

1. Determine the sufficiency of Virginia's pool bond fund using forward-looking market projections to assess the likely future fees paid into the fund.
2. Determine the sufficiency of the current bond pool total, and potential limitations imposed by the \$20 million cap and current fee structure, to guaranteeing the solvency of the state's pool bond, given particular adverse scenarios, including but not limited to the forfeiture of all of one of the state's primary coal mine operator's permits participating in the pool.
3. Determine the extent to which the lack of limitations on amounts allowed to be underwritten by a single surety increase the risk of insolvency of the pool bond fund.
4. For each current SMCRA permit:
 - a. Determine the current reclamation status and include a determination of the date of last coal removal for each permit and annual reclamation progress made since the date of last coal removal.
 - b. Determine the sufficiency of each permit's bond based on the current reclamation status of each permit. If each permit had to be

fully reclaimed from its current status, would the bond amount be sufficient?

5. For all mines that have been forfeited within the past five years, determine the length of time before reclamation work begins.

Appendix I. Bristol Virginia Landfill Update and Requests, September 2022

Bristol Virginia Landfill Update and Requests
September 12, 2022
Rev. Dr. Samuel Weddington Member,
Bristol Area Ministerial Alliance

I hope this report will update the Governor's Council on Environmental Justice on the status of the Bristol, Virginia landfill, and the ongoing concerns of the community.

1. Status Update

Since our last update on 7/19/2022, there have been developments for which we, as a community, are thankful. The first is that as of September 9, 2022, the city of Bristol, Virginia has stopped taking trash at the landfill. The city is currently trying to find a permanent place to take its trash, and negotiate a long-term contract.¹

However, the problem of not having a long-term contract for the landfill is a good entry point into discussing the status of Bristol, Virginia's approach to adopting the recommendations of the expert panel. The city put out a Request for Proposal (RFP) for trash disposal on August 17,² but there were no responses. When the US District Judge, James Jones, inquired about this, the city manager, Randy Eads responded that the city would pay gate rate for the trash until such time as they found a bidder. However, the Governor should note that the city waited until August 17 to issue the RFP for trash collection. At a minimum, they had from the announcement that the city would no longer accept trash on June 8, 2022 to begin the RFP process,³ but delayed for over 60 days. In other words, the city's action plan on what to do with its trash given this crisis

¹ https://heraldcourier.com/news/no-good-bids-means-city-will-pay-regular-rate-to-dump-its-garbage-after-landfill/article_7406cf7a-2e2d-11ed-9f54-4737782dc9dd.html

² https://heraldcourier.com/news/city-asks-for-bids-from-landfills-willing-to-take-its-garbage/article_cd3a59a8-23f7-11ed-8388-1f93cb701a2d.html

³ https://heraldcourier.com/news/local/bristol-va-to-stop-accepting-trash-enters-into-agreement-with-deq/article_96fd4bd6-c5c0-5c10-bd41-574aeb4bfccce.html

seems to operate in piecemeal fashion. The only strategy we see so far is to issue RFPs in the hope a landfill or trash collection company will take the city up on a proposal.

This does not bode well for the city, or the larger Bristol community. The city needs to develop a long-term strategy on how it will accomplish ALL the different benchmarks set out by the expert panel, rather than patching together last-minute fixes that ultimately fall through.

Though the city's agent, SCS Engineers, submitted an implementation plan, it is not comprehensive in the sense that it only addresses some elements of the Expert Panel Report.⁴ At a minimum, it certainly lacks concrete timetables. In fact, the plan even attempts to open the possibility of the city reopening the landfill and resuming trash collection "once the odors are controlled and ETLF conditions managed."⁵ We cannot reiterate what a potentially disastrous approach to this problem the city seems to be adopting. From our perspective, the question of resuming operations at the landfill seems an exercise in wishful thinking, especially in light of the trauma this disaster has inflicted on residents.

Moreover, there are real concerns in our community about Bristol, Virginia's commitment to adopting the recommendations of the expert panel. The best step the city could take in this direction would be the final adoption of a Consent Order with the Virginia Department of Environmental Quality (VADEQ), a step already agreed to by the city of Bristol, Virginia. However, the city has yet to finalize that agreement with VADEQ. In a communication from the Southwest Region office of VADEQ on Friday, September 16, 2022, we were told that VADEQ is "currently working with Bristol's legal staff discussing the terms of the draft Order," and there were no updates available on the status of Bristol, Virginia's efforts to comply with the findings of the expert panel.

⁴ <https://www.bristoltn.org/DocumentCenter/View/9705/Preliminary-Injunction-Item-5-Report-8-15-2022>

⁵ Ibid. See point 2, page 4.

It is likely that this delay is caused by recent legal maneuvers undertaken by the city of Bristol, Virginia to have elements of the injunctive relief it already agreed to in federal court lifted. In the June 14, 2022 agreement reached in federal court between Bristol, Virginia and Bristol, Tennessee to resolve emission and odor issues (including the closure of the landfill), Bristol, Virginia agreed to the granting of “preliminary injunctive relief” in line with the injunction filed by Bristol, Tennessee in US District Court on May 26, 2022.⁶ The settlement specified dates for a number of benchmarks to be met by the city of Bristol, Virginia set out in the expert panel report.⁷

Those benchmarks were not met, with the exception of the closure of the landfill. Specifically, the city failed to provide adequate cover to the landfill, and was not able to secure and install thermocouples in the landfill to monitor temperatures. Instead, the city of Bristol, Virginia filed a series of motions on August 22, 2022, some of which sought extensions to the deadlines already agreed to by the cities.⁸ Some of the reasons cited by the city were the inability to get proper thermocouples, the prevalence of rain in our area, and the inability to hire enough workers to execute on the plan (primarily due to COVID).

On August 31, 2022, Judge Jones granted one additional month to provide adequate cover for the landfill, and required the city to submit an adequate requisition plan for the thermocouples within 14 days of the ruling. However, it should be noted that the Judge expressed a great deal of skepticism regarding the urgency of the city’s approach, stating, “Bristol Virginia should have anticipated the problems it now faces before agreeing to the strict

⁶<https://bloximages.newyork1.vip.townnews.com/heraldcourier.com/content/tncms/assets/v3/editorial/a/8c/a8c884e0-ec08-11ec-8260-cf05da54949b/62a8c7b4dfa42.pdf>.

⁷https://heraldcourier.com/news/local/both-brisols-reach-agreement-on-landfill-injunction/article_06fb3ebd-13c4-51ea-87ad-e913aae2b076.html

⁸https://drive.google.com/drive/u/0/folders/1wfVWUrM1T8rfgIdy7cIR_qiphHU4cHxh

deadlines of the injunction,” and that the city’s lack of planning, especially for contingencies, in regard to the project has left the city without adequate flexibility or ability to respond.⁹ The judge also ordered Bristol, Virginia to pay all the legal fees and expenses of Bristol, Tennessee in regard to the extension motions submitted by Bristol, Virginia.

2. Community Needs

In light of the inclusion of language like this in the plan, the lack of finality in regard to the Consent Order with VADEQ, as well as recent legal maneuvers by Bristol, Virginia, we feel the city needs to clearly and publicly commit to accomplishing the recommendations of the expert panel. More than publicly committing, it needs to develop a full and complete approach to the remediation of this disaster. If it continues to stall, or refuses to take these concrete steps, we would like to see the Commonwealth force the city to comply with the reasonable measures called for in the expert panel report. Discussions like reopening the landfill do not foster trust with the community, and certainly calls into question how permanent and complete the remediation measures will eventually be. We also feel like the city’s energy should be focused on compliance rather than attempting to lift compliance requirements.

Moreover, the list of questions and concerns we initially registered with the EJ Council, VADEQ, and the city has only grown since our July 19, 2022 report. We have repeatedly asked the city and VADEQ to carry out recommendation #10 that would see the city develop an adequate community outreach and communication plan to help citizens understand the process, and set expectations. While we did receive an encouraging letter from VADEQ Director Rolband on July 27, 2022, indicating that the DEQ “plans to proceed with a Consent Order with the City

⁹ https://heraldcourier.com/news/judge-extends-landfill-deadline-admonishes-city-for-poor-planning/article_4efd1fce-2976-11ed-b8fe-23dff9b1f821.html

to memorialize the City’s final Plan of Action and the Expert Panel’s recommendations,” including the acceptance of public comment, we were also told that the responsibility to “develop and implement an active community outreach program” lies with the city of Bristol, VA.

While we are thankful for Director Rolband’s response, it is becoming increasingly clear to the public that the city plans to communicate as little as possible with the public on this matter. The city has yet to hire the PR firm meant to coordinate communication with the community it outlined in its own action plan. Additionally, the City Council and Manager continue to refuse to make public comment at Council meetings regarding the landfill, often citing they “have nothing new to report,” or “no comments tonight”¹⁰ despite the presence of the public asking questions and making comments about the landfill. Therefore, we would like to ask that the Governor’s office and VADEQ take steps to force the city’s compliance with recommendation #10, and have Bristol, Virginia enter into meaningful dialogue with the citizenry so that everyone is aware of the status of the remediation effort, and public expectations about progress are set appropriately.

Finally, as we have repeatedly noted in these reports, there are ongoing quality of life issues for residents, especially amongst the vulnerable who lack adequate resources to deal with the landfill gases flooding their homes. We need help from the Commonwealth to bring much needed aid for community relief. Citizens continue to suffer from landfill emissions, and the need for purifiers and vouchers vouchers away from the area during heavy gas periods are necessary aid that the state has within its power to provide. Also, redoubling efforts to help

¹⁰ City Manager’s comments, timestamp 3:04, City Council meeting August 9, 2022. <https://youtu.be/QymgXI0PcUI>
See also City Manager’s comments, timestamp 2:10, City Council meeting July 26, 2022. <https://youtu.be/W6-meL85BHE>

weatherize the older housing stock in Bristol, Virginia would not only pay dividends in terms of raising energy efficiency, it would also help control the inflow of gases into residents' homes.

Submitted respectfully,

A handwritten signature in black ink, appearing to read "Samuel Weddington". The signature is fluid and cursive, with a large initial "S" and "W".

Rev. Dr. Samuel Weddington
Senior Pastor, First Presbyterian of Bristol, TN
Minister Member of the Bristol Area Ministerial Alliance

Appendix J. Letter to VA Attorney General Enforcement Action Against the City of Bristol, VA, December 2022

December 7, 2022

Office of the Attorney General
202 North Ninth Street
Richmond, Virginia 23219

Subject: VA AG Enforcement Action Against the City of Bristol, VA

Reference: City of Bristol Solid Waste Management Facility (Permit No. SWR01184 and SWP588) and Title V Air Permit SWRO 11184

Dear Attorney General Miyares:

Greetings and peace to you. Our understanding is that the matter of the quarry landfill in Bristol, VA has been referred to your office.¹ On behalf of our community coalition comprised of the Bristol Area Ministerial Alliance (BAMA), HOPE for Bristol, Virginia Interfaith Power and Light (VAIPL), the Sierra Club of Tennessee and Virginia, and numerous citizens who have been adversely affected by the gases emanating from the Bristol, Virginia quarry landfill, we are writing to express our concerns and desires.

As you know, the Expert Panel convened by the Department of Environmental Quality produced a series of recommendations to help guide the remediation of the landfill in our city.² While the city is currently working to enact portions of the plan, we are concerned that the referral of the matter of Consent Order to your office seems to suggest that the natural progression of negotiations between the city and the Virginia Department of Environmental Quality has been stymied. We know that your office will do its best to make sure the citizens of our city are protected, but the delay in producing enforceable measures governed by the Commonwealth prolongs the matter, both legally and politically. Contrary to the City Manager's claims that this measure is welcomed by the city as it produces "additional court oversight,"³ delaying an enforceable agreement between the city and the state keeps the citizenry unsure about the scope, timelines, and costs of remediation. We need the clarity a Consent Order would bring to this environmental crisis, and the enforcement power of the state to ensure the remediation is expedited for the sake of the suffering.

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¹David McGee, "Landfill consent order now in the hands of Virginia's AG," *Bristol Herald Courier*, October 31, 2022, https://heraldcourier.com/news/local/landfill-consent-order-now-in-the-hands-of-virginias-ag/article_03d14be6-596a-11ed-8864-838b5fd4fd2f.html

²The Charles E. Via, Jr. Department of Civil and Environmental Engineering, "Expert Panel Report: Bristol Integrated Solid Waste Management Facility, Bristol, Virginia," Virginia Tech, April 25, 2022, <https://www.deq.virginia.gov/home/showpublisheddocument/14196/637865007723100000> ³David

McGee, "Landfill consent order now in the hands of Virginia's AG," *Bristol Herald Courier*, October 31, 2022, https://heraldcourier.com/news/local/landfill-consent-order-now-in-the-hands-of-virginias-ag/article_03d14be6-596a-11ed-8864-838b5fd4fd2f.html

1 | Letter to the Attorney General's Office, December 1, 2022

The facts of the case are not in dispute. The findings of the Expert Panel, and the referral of the enforcement action to your office clearly demonstrates the fact that the landfill has been systemically mismanaged by the City of Bristol, VA.⁴ Given the nature of the subsurface reaction in the landfill, delay (for whatever reason) not only prolongs our waiting and suffering, it also risks the possibility of further catastrophe. We understand your need to provide due process to all parties, however there is only one pathway to ensure public health and a quality of life deserved by all Bristolians. **The City of Bristol VA must be compelled to close the landfill permanently in order to protect public health and quality of life.** No Avenue for the city to continue to reopen and operate the landfill must be provided. This action would be consistent with Federal and State statutes.

Secondly, we are also concerned that referral to your office will effectively eliminate public comment on remediation plans. We have written numerous letters to the Virginia Department of Environmental Quality expressing our concerns. We are thankful for the engagement and concern expressed by Director Rolband. In his responses, he clearly indicated that "DEQ... will of course conduct appropriate public meetings and as required, allow for public comment opportunities as part of any and all future permitting actions that may be necessary for Bristol to implement the findings of the expert panel."⁵ However, with the matter now referred to your office, will such opportunities be provided to the citizenry?

As we are the community affected by a Consent Order or other enforcement action by the Commonwealth, we should be given a clear explanation of these proposed actions, preferably at a series of in-person, public meetings led by DEQ. Frankly, we have been disappointed by DEQ in this regard. There has yet to be a public meeting led by DEQ after the results of the Expert Panel were released. We invited numerous DEQ officials to our public meeting at the train station in Bristol, VA on November 3, 2022. No officials showed up, though we are thankful for the presence of elected officials throughout the Commonwealth and Tennessee. At these future meetings we are requesting a concise description of the nature of the work to be carried out, and opportunity to share with the city and the state our concerns that may arise from these actions. Any other course would effectively eliminate the community's ability to be informed adequately of the work being done in its name.

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⁴These violations are numerous and involve air emissions, air pollution control technologies, solid waste operations and stormwater protection. The Bristol landfill is currently exceeding the principle priorities of 40CFR60 Subpart WWW and of 40CFR63 Subpart AAAA promulgated to protect communities from landfill air emissions. ⁵Michael Rolband, "DEQ Response to Rev. Dr. Samuel Weddington et al. re Letter of Thanks and Invitation from Bristol," April 29, 2022. https://drive.google.com/file/d/1io4dJgpKwi08SQIn86ZArP0et_VlFRTP/view?usp=share_link See also Michael Rolband, "DEQ Response to Becky Evenden, HOPE Bristol, re Integrated Solid Waste Management Facility," March 17, 2022.

Finally, the city's landfill places an unconscionable burden on our community as a whole, and places additional stresses on the vulnerable.⁶ As the data clearly supports, the landfill is surrounded by populations least able to deal adequately with the consequences surrounding the Bristol landfill, and all of us are being asked to shoulder a burden no community should have to carry. The impacts on the quality of life for our residents is well-documented, and worth the attention of your office.⁷ Furthermore, our community is being exposed to consequential concentrations of hydrogen sulfide, ammonia, and other landfill gases that are both malodorous and hazardous. The health effects of persons living near landfills with hydrogen sulfide emissions have been documented.⁸ Accordingly, we plead with your office to make relief for the community in the form of practical measures like purifiers, travel vouchers (during periods of intense drilling, for example), funding for preventative measures in public buildings and schools, and other forms of aid a key part of any enforcement action. We desperately need help, especially the vulnerable.

In conclusion, we feel the circumstances surrounding the ongoing operation of the Bristol, Virginia landfill have reached a critical inflection point. Proper closure and post-closure control measures of the landfill is the only path that will ensure protection for the public and improve the quality of life of citizens in Bristol. Moreover, the citizens of our city need access to

⁶Using the EPA's Environmental Justice Mapping Tool, it is clear that the area most immediately affected by the landfill crisis has a high rate of poverty, lack of good educational outcomes, lack of adequate access to healthcare resources, poor housing stock (thus the homes are more vulnerable to gas penetration), and the highest concentrations of persons of color in the city. In this sample, selecting for persons without a high school diploma, household incomes between \$15,000 and \$25,000, and People of Color population clearly shows that many of the most vulnerable in our city disproportionately carry the burden on this landfill debacle. https://drive.google.com/file/d/1XuEuCkQPc_iMTZvwVGakLOUyf3xypclc/view?usp=share_link ⁷One only has to read the heartrending account of resident Ashley Stone to hear the cries of devastation this landfill has wreaked upon our community. See Ashley Stone, "Landfill is robbing us of time, memories," *Bristol Herald Courier*, November 30, 2022, https://heraldcourier.com/opinion/letters/your-view-landfill-is-robbing-us-of-time-memories/article_9f8254d2-7115-11ed-979e-2369e3afb2f1.html. See also Selena Reynolds, "Cover both sides of the landfill disaster," *Bristol Herald Courier*, November 29, 2022, https://heraldcourier.com/opinion/letters/your-view-cover-both-sides-of-landfill-disaster/article_e1120e50-702b-11ed-a1c4-4ffa97bd8157.html. See also Samuel Weddington, "The Devil Comes to Bristol: The 'systemic poisoning of a community,'" *Bristol Herald Courier*, July 18, 2021, https://heraldcourier.com/opinion/guest-view-the-devil-comes-to-bristol-the-systemic-poisoning-of-a-community/article_83d6af92-c2fa-5a27-a9d2-df6a1f4e7ac3.html

⁸Oxford University Press, "Living near a landfill could damage your health," *ScienceDaily*, May 24, 2016, <https://www.sciencedaily.com/releases/2016/05/160524211817.htm>. See also CD Heaney, S Wing, RL Campbell, D Caldwell, et. al., "Relation between malodor, ambient hydrogen sulfide, and health in a community bordering a landfill," *Environ Res.* 2011 Aug;111(6): 847-52, <https://pubmed.ncbi.nlm.nih.gov/21679938/>. In addition to the hazards presented by hydrogen sulfide and ammonia coming from the landfill, the landfill is a significant emission source of Benzene (a Hazardous Air Pollutant and a listed Hazardous Waste Compound) which is notable in that prior US EPA studies of landfill emissions did not find benzene as the major contributor to the BTEX compound class. Our communities are exposed to ambient air benzene concentrations in excess of the National Air Emissions Standards for Hazardous Air Pollutants at the site boundary of petroleum refineries (40 CFR 63 Subpart CC) of 6 µg/m³. Benzene concentrations near the Tennessee-Virginia state line measured above the

Subpart CC limit. Bristol Virginia communities demonstrate concentrations 24 to 12 times the Subpart CC site boundary limit.

3 | Letter to the Attorney General's Office, December 1, 2022

information, the ability to ask questions, and the opportunity to provide constructive feedback. Most importantly, we need aid for relief measures to assist our beleaguered citizens.

Sincerely,

Bristol Area Ministerial Alliance (BAMA)

HOPE for Bristol, Board of Directors

C. Donald Evans PhD, PE

Rev. Jackie Nophlin, Household of Faith Community Church, President, BAMA Rev. Dr. Samuel Weddington, Senior Pastor, First Presbyterian of Bristol, TN, Member, BAMA Rev. Dr. Kris Aaron, Senior Pastor, First Baptist of Bristol, VA, Member, BAMA Rev. Steven Davis, Brothers for Christ Community Response, Member, BAMA Virginia Interfaith Power and Light

Sierra Club, Tennessee Chapter

Daniel W. Firth, PhD, Sierra Club Tennessee Chapter

Sierra Club, Virginia Chapter

Gustavo Angeles, PhD, Sierra Club Virginia Chapter

cc: Governor Glenn Youngkin

Senator Todd Pillion

Delegate Israel O'Quinn

Senator Mark Warner

Senator Tim Kaine

Congressman Morgan Griffith

Chuck Slemph, Chief Deputy Attorney General, VA Attorney General's Office Darrel DJ Jordan, Jr., Chief of Staff, VA Attorney General's Office

Andrew Ferguson, Solicitor General, VA Attorney General's Office

Coke Stewart, Deputy Attorney General, VA Attorney General's Office

Lindsey Holman, Community Outreach Coordinator, VA Attorney General's Office Victoria LaCivita, Director of Communications, VA Attorney General's Office

Jerry Wolfe, Commonwealth's Attorney, Bristol VA

Randy Eads, City Manager and Attorney, Bristol VA

Members of the Bristol Virginia Council

Michael Rolband, Director, VADEQ

Chad Martin, Regional Liaison, Department of Environmental Justice, VADEQ Jerome Brooks, Department of Environmental Justice, VADEQ

Jeffrey Hurst, Regional Director, VADEQ

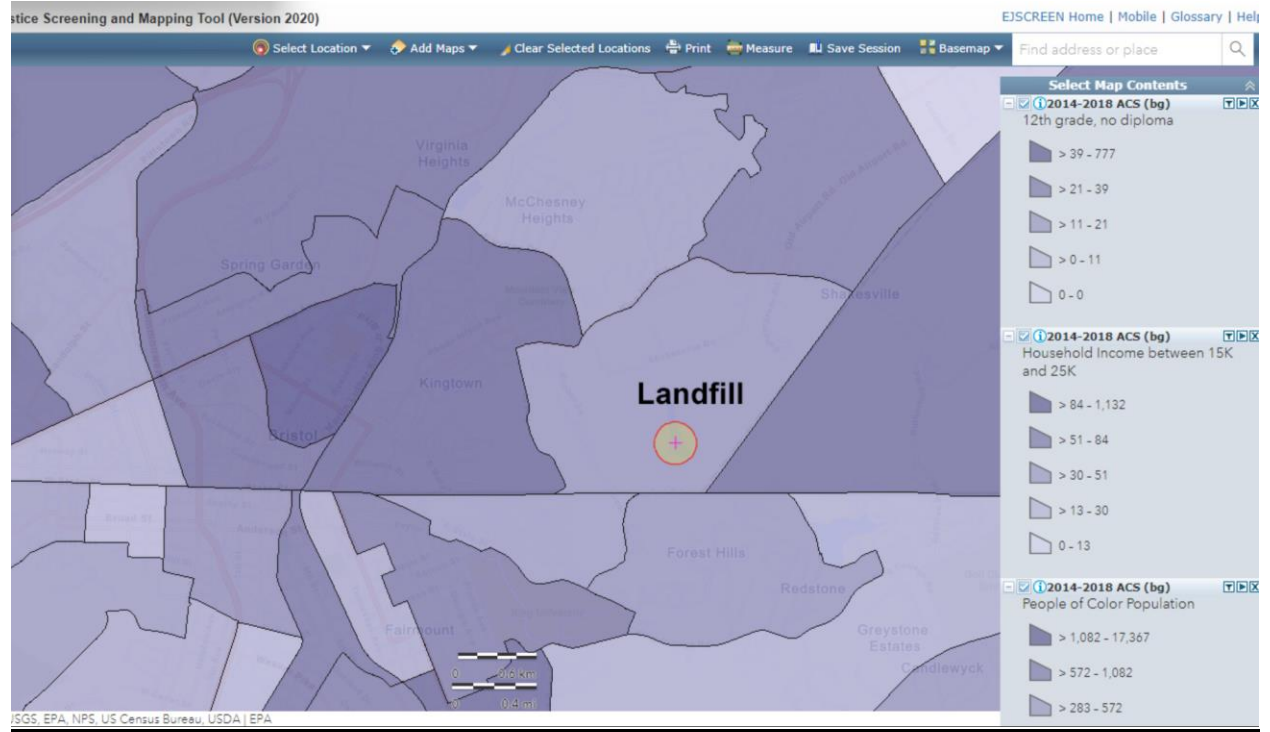
Virginia Council on Environmental Justice

Taysha DeVaughan, Chair, Virginia Council on Environmental Justice
Office of Environmental Justice, EPA

4 | Letter to the Attorney General's Office, December 1, 2022

Reginald Harris, EPA Region 3, Office of Environmental Justice
Tami Thomas-Burton, EPA Region 4, Office of Environmental Justice
Loan Nguyen, EPA Office of Enforcement and Compliance Assurance, OEJ
Diana Esher, EPA Region 3 Acting Regional Administrator
Karen Melvin, EPA Region 3 Enforcement and Compliance Assurance
Division
Myles Bartos, EPA Region 3 OSC
Lora Siegmann Werner, ATSDR Region 3 Regional
Director
Senator Jon Lundberg
Representative John Crawford
Congresswoman Diana Harshbarger
Bill Sorah, City Manager, Bristol TN
Members of Bristol Tennessee Council
David Akard, Sullivan County Commissioner
Jan Compton, Regional Director TDEC
Beth Rhinehart, Bristol Chamber of Commerce
Bristol Herald Courier News Desk
WJHL News Room
WCYB News Room

Appendix L. EJ Screen Map of Bristol Landfill



Appendix L. Letter from DEQ to HOPE for Bristol, March 2022



Commonwealth of Virginia
VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219
P.O. Box 1105, Richmond, Virginia 23218
(800) 592-5482 FAX (804) 698-4178
www.deq.virginia.gov

Travis A. Voyles
Acting Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4020

March 17, 2022

VIA ELECTRONIC MAIL

Ms. Becky Evenden
HOPE for Bristol
P.O. Box 2154
Bristol, TN 37621

Re: Bristol Integrated Solid Waste Management Facility

Dear Ms. Evenden,

Thank you for your letter of March 15, 2022, and for your continued interest in our efforts to assist the Bristol Integrated Solid Waste Management Facility (the Facility) identify technical solutions to address odor issues at the Facility. We are taking this issue very seriously and engaging outside resources to assist the Facility in working through this problem.

As you know, the Department of Environmental Quality (DEQ) is going beyond its regulatory role in this situation and taking the unprecedented step to contract with Virginia Polytechnic Institute and State University (Virginia Tech University) to provide technical resources to the Facility, in order to help the Facility identify technical and practical solutions for addressing the issues. To be clear, this contractual work is to provide technical support and information to the Facility and is outside the scope of DEQ's normal permitting and enforcement authorities and activities.

Pursuant to the contract, Virginia Tech University is convening a nationally recognized panel of engineering experts with specific expertise in the challenges that face the Facility. The meeting of this contracted group is not required to be open to the public. This expert panel has limited time (only 2 days) and resources to study, review and discuss very technical issues related to the landfill design, mitigation measures to date, extensive data sets and volumes of

Ms. Becky Evenden
HOPE for Bristol
Page 2
March 17, 2022

documents related to this Facility, and then collaborate on engineering options that may be feasible and practicable for addressing the issues at this Facility. Once the panel concludes its discussions, Virginia Tech University will prepare a final report of the panel's technical recommendations for addressing the issues at the Facility. That final report will be provided to the Facility and to DEQ and will then be available to the public and posted on the DEQ website, as soon as possible.

As you indicate, there are pending enforcement actions related to the Facility. At this time, DEQ's priority is to help the Facility, and thereby the community, find technical and practical solutions to address the Facility's issues, as well as potential funding to implement these solutions. Whatever next steps DEQ takes within its regulatory purview, whether they are part of an enforcement or permitting action, we plan to include opportunities for meaningful public engagement.

I understand your concerns regarding the Facility. As we have demonstrated, both by our actions to facilitate the development of technical and practical solutions and in our engagement to date, we take seriously your concerns regarding the Facility and we hope to continue to have an open and engaging working relationship going forward. To that end, I am asking Jeff Hurst, Regional Director for DEQ's Southwest Regional Office to establish a schedule to periodically meet with you. I have also directed that he and Renee Hoyos, Director of DEQ's Office of Environmental Justice, work together to ensure that our technical and environmental justice staff jointly participate in those meetings to work collaboratively with you to address your concerns.

Sincerely yours,



Michael Rolband
Director

Cc: Corey Scott, OSNR
Jeffrey L. Hurst, DEQ
Renee Hoyos, DEQ
James J. Golden, DEQ
Jeffery A. Steers, DEQ