

Virginia Council on Environmental Justice: Emerging Issues Subcommittee

Thursday, June 2nd, 2022 10:00am –11:30am EST

Location: First Baptist Church, 125 Sedgefield Street, Bristol, VA 24201

If you would like to join the meeting from your computer, tablet or smartphone, click

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Note: there was confusion amongst Council membership regarding this meeting's livestreaming location. All minutes are consolidated below.

Agenda

Bristol Area Ministerial Alliance (BAMA) update

Where We Stand re: BVA Landfill

6/1/22

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.¹

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).² As you can tell, this is quite the "laundry list" of things to get done. That said, these are steps that

¹ <https://www.deq.virginia.gov/home/showpublisheddocument/14196/637865007723100000>

² 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.

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.³ 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.”⁴ 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 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

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.

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>

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, 2022.⁵ The complaint⁶ 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, (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 injunction⁷ 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 agreement⁸ 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)⁹, 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.¹⁰ 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 #7c¹¹

⁵ <https://www.bristoltn.org/1477/Bristol-VA-Landfill>

⁶ <https://www.bristoltn.org/DocumentCenter/View/9578/2022-05-26-Complaint>

⁷ <https://www.bristoltn.org/DocumentCenter/View/9577/2022-05-26-Expedited-Motion-for-Preliminary-Injunction>

⁸ https://www.bristolva.org/DocumentCenter/View/3747/BRTN-Lawsuit-Settlement-Agreement_52722

⁹ https://drive.google.com/file/d/1ZN6f0xGVhRyvjiHXis1HUV_KmTGrrS8di/view?usp=sharing

¹⁰ <https://budget.lis.virginia.gov/amendment/2022/2/HB30/Introduced/CR/377/2c/>

¹¹ <https://budget.lis.virginia.gov/amendment/2022/2/HB30/Introduced/CR/375/7c/>

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 #1c¹² 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.

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,¹³ 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 that have to bear the brunt of this ecological disaster effectively.

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.

¹² <https://budget.lis.virginia.gov/amendment/2022/2/HB30/Introduced/CR/386/1c/>

¹³ Council Meeting, 5/24/2022, <https://www.youtube.com/watch?v=tHmMAzKMgA8>, time marker 50:20.

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 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.¹⁴

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 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 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,

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>.



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

Southern Appalachian Mountain Stewards (SAMS) update

By Garrett Nunley

Today I am here to speak on behalf of Southern Appalachian Mountain Stewards, or SAMS. We are an organization dedicated to addressing the current & legacy impacts of extraction in coal impacted communities of Southwest Virginia. As a grassroots organization on the frontlines of extraction in Virginia our members have experienced firsthand the harm of mountaintop removal mining sites that litter the landscape, polluting our air and water. As the coal industry continues to externalize its costs onto our communities SAMS will continue to take action and build awareness alongside our neighbors to hold these companies accountable. Mountaintop removal mining & extraction continues to be a blight on our communities. These profound impacts on our region of the state are still ongoing and we thank the Virginia Council on Environmental Justice for this opportunity to share our concerns. Since its inception, SAMS has been dedicated to protecting our communities from extractive corporate profiteering at the expense of the long-term health and well-being of our communities. Nothing embodies this practice more than mountaintop removal coal mining, a practice that offers no long-term benefits, does not produce wealth for our communities, and does not sustain long-term employment opportunities for our workers. Rather, it causes serious harm to public health while permanently scarring the face of our natural landscape. In Appalachian Virginia, our mountains are an essential symbol of our shared heritage, and so the practice of mountaintop removal coal mining is an especially egregious infringement on our culture, opportunity, & identity as Appalachian peoples. Local and state governments have failed to adequately condemn or address this practice. This is particularly troubling as those same entities continue to advocate the development of Southwest Virginia as a cultural heritage and ecological tourism destination while turning a blind eye to this practice which ultimately impacts our natural environment and cultural landscape in ways that are in direct conflict with that image of our region. In particular, our organization was formed and shaped by a ten-year-long fight to prevent a large-scale mountaintop removal project at Ison Rock Ridge in Appalachia, VA from coming to fruition. This project would have defaced 1000 acres of mountains in western Wise County and have severe consequences for the former coal camps in close proximity to the site, which is still home to numerous families, as well as the town of Appalachia. While we were ultimately successful in this fight it has come to our attention that companies are once again seeking permits to strip sections of Ison Rock Ridge. While we ultimately advocate for the end of mountaintop removal mining in Virginia and across the United States we urge this council to encourage state regulators to apply the strictest scrutiny allowable under the law on the to end permitting of new Mountaintop removal mines and to take into account the broader social and ecological impacts that such permitting may have. In recent years, SAMS has also begun to engage in the citizen's monitoring process to ensure that former mine lands are reclaimed in accordance with State and Federal guidelines. In the case of both sites that we are engaged in monitoring, major benchmarks named in those sites' compliance agreements have been missed. SAMS is currently moving forward with the intent to sue A&G Coal Corporation, owned by West Virginia Gov. Jim Justice and his family, of their intent to file a lawsuit against the company for its failure to reclaim surface coal mines in Wise County. This failure is not an isolated incident by a single bad actor, but rather reflects a systematic failure to hold industry actors

accountable. In light of these developments, we urge this council to press on state regulators to hold corporate actors accountable. In addition to these activities, we have recently engaged in a campaign against Old Dominion Power with regards to a recently planned powerline expansion in Big Stone Gap, Virginia that would result in unnecessary intervention into forests and wetlands, this planned expansion in particular would have an outsize impact on Italy Bottom, a historically black community of Big Stone Gap. While SAMS has been successful in mobilizing our local community against this expansion, we recognize the need for more comprehensive guidelines and protections for communities affected by the broader social and ecological impact of industrial activities within communities. We would employ Virginia to review its regulatory framework that incentivizes power companies to push projects that are harmful to communities rather than complementary to their needs. Lastly, SAMS is engaged in the ongoing work of providing mutual aid and support to our communities. Appalachian communities experience poverty that is disproportionate to the rest of the state and the nation. As with all forms of justice, we view this aspect of our work as being not separate from our environmental justice work but inherently linked through the impact of long histories of wealth and resource extraction. In light of that we recognize that environmental justice requires broad intervention that addresses systems of poverty and creates economic opportunity for our communities, and for current and former energy workers who are among those most impacted by environmental injustice. Recognizing this we hope that this council and other bodies of government will recognize the vital importance of targeted economic and social policy solutions that create opportunities for healing, restoration, and reparations in communities impacted by environmental injustice in all of its forms.

Closing – Rev. Duwane Mayberry
Meeting ended at 11:03am