

**STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION
ORDER BY CONSENT
ISSUED TO
City of Bristol, Virginia.
Registration No. 11184**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1 – 1301 and 10.1 – 1184, between the State Air Pollution Control Board and the City of Bristol, Virginia for the purpose of resolving certain violations of State Air Pollution Control Board Regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a collegial body of the Commonwealth of Virginia described in § 10.1-1301 and § 10.1-1184 of the Code.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Regional Office" means the Southwest Regional Office of the Department.
6. "Order" means this document, also known as a Consent Order.
7. "Regulations" means the "State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution", which have been incorporated into Title 9 of the Virginia Administrative Code (VAC).
8. "ISWMF" means City of Bristol Integrated Solid Waste Management Facility at 2125 Shakesville Road, Bristol, Virginia 24201.

9. "NSR Permit" means new source review for State construction, modification or reconstruction.
10. "Title V Permit" means Federal Operating Permit.

SECTION C: Findings of Facts and Conclusions of Law

1. The City of Bristol, Virginia owns and operates the ISWMF.
2. The City of Bristol, Virginia was issued a Stationary Source Permit to Modify and Operate the ISWMF Solid Waste Incinerator on March 12, 2001.
3. The ISWMF's Landfill No. 498 began receiving waste in 1986.
4. In accordance with Subpart WWW, Standards of Performance for Municipal Solid Waste Landfills, §60.752 (b)(2) and §60.759 once the landfill design capacity became greater than 2.5 million megagrams, the City was to submit to the Department a plan for collection and control of landfill gases. The City submitted a plan on July 8, 1999, for the installation of a collection and control system for contiguous Landfills #221 and #498 as fulfillment of the requirements of 40 CFR 60.752 (b)(2). The collection system for Landfill #221 has been installed and is operating.
5. The City of Bristol, Virginia did not ask DEQ or EPA for a variance to the plan to not install the collection system in Landfill #498 due to mining of the waste from this landfill.
6. On March 7, 2002, DEQ sent a Notice of Violation Letter (NOV No. 03-01-02) by Certified Mail-Return Receipt Requested, to the City of Bristol, Virginia, informing the City that DEQ had reason to believe that a violation of Air Pollution Law and Regulations 9 VAC 5-50-410 and Subpart WWW, Standards of Performance for Municipal Solid Waste Landfills, §60.752 (b)(2) had occurred.
7. Confirmation with EPA stated that there is no variance granted for mining activities at a landfill.
8. To resolve this violation changes will have to be made to the Title V permit and a NSR Permit application will need to be submitted.
9. The City of Bristol, Virginia proposed a potential Supplemental Environmental Project (SEP) to DEQ on August 2, 2002. However, the proposed SEP is on TVA property operated by the City of Bristol, Virginia. Thus the TVA and the Army Corp of Engineers approval was requested concurrently with that of DEQ. Both the Corp and TVA have given approval to the plan.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1 – 1316 (C), orders the City of Bristol, Virginia and the City voluntarily agrees to perform the actions described in Appendix A of this Order. In addition, the Board orders the City of Bristol, Virginia and the City voluntarily agrees to pay a civil charge of \$12,600.00 in settlement of the violations cited in this Order.

1. **\$126.00 of this civil charge shall be paid within 30 days of the effective date of this Order. Payment must indicate that the civil charge is pursuant to the City of Bristol, Virginia Order. Payment shall be by check, certified check, money order or cashier's check payable to "Treasurer of the Commonwealth of Virginia" and sent to:**

**Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240**

For purposes of properly identifying its payment, the City of Bristol, Virginia shall include with the check, a notation of its Registration Number, Federal Identification Number and the fact that payment is being made in accordance with the terms of this Order.
2. **On June 13, 2002 the ISWMF submitted a plan with a schedule for installation of a gas collection system for Landfill #498 to operate during the removal of waste from the landfill.**
3. **\$12,474.00 of this civil charge shall be satisfied upon completion by the City of Bristol, Virginia of a Supplemental Environmental Project (SEP) pursuant to the Virginia Code 10.1-1186.2 and as described in Appendix A of this Order.**
4. **In the event that the SEP is not performed as described in Appendix A, upon notification by the Department, the City of Bristol, Virginia shall pay the amount specified in paragraph 3 above within 30 days of such notification according to procedures specified in paragraph 1 above, unless an alternate project has been agreed upon by the parties.**
5. **The ISWMF will submit an application for an NSR permit within 60 days and apply for modification to the Title V permit within 90 days of the issuance of this order.**

SECTION E: Administrative Provisions

1. **The Board may modify, rewrite, or amend the Order with the consent of City of Bristol, Virginia for good cause shown by the City, or on its own motion after notice and opportunity to be heard.**
2. **Nothing herein shall be construed as altering, modifying, or amending any term or condition contained in the City's Stationary Source permit dated March 21, 2001.**
3. **This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the ISWMF as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.**
4. **For purposes of this Order and subsequent actions with respect to this Order, the City of Bristol, Virginia admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.**

5. **The City of Bristol, Virginia consents to venue in the Circuit Court of the City of Bristol for any civil action taken to enforce the terms of this Order.**
6. **The City of Bristol, Virginia declares it has received fair and due process under the Administrative Process Act, Code §§ 9-6.14:1 *et seq.*, and the State Air Pollution Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board or Director to enforce this Order.**
7. **Failure by the City of Bristol, Virginia to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.**
8. **If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.**
9. **The City of Bristol, Virginia shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. The City of Bristol, Virginia must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. The City of Bristol, Virginia shall notify the Director and the Director of the Southwest Regional Office within 24 hours with a follow-up in writing within seven days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:**
 - a. **the reasons for the delay or noncompliance;**
 - b. **the projected duration of such delay or noncompliance;**
 - c. **the measures taken and to be taken to prevent or minimize such delay or noncompliance; and**
 - d. **the timetable by which such measures will be implemented and the date full compliance will be achieved.**

Failure to so notify the Director and the Director of the Southwest Regional Office within 24 hours of learning of any condition listed above, which the City intend to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

10. **This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.**
11. **This Order shall become effective upon execution by both the Director or his designee and the City of Bristol, Virginia. Notwithstanding the foregoing, the City agrees to be bound by any compliance date which precedes the effective date of this Order.**
11. **This Order shall continue in effect until the Director or the Board determines the**

City of Bristol has met all the conditions of the order and the City is thereafter

notified of compliance by the Department. Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve City of Bristol, Virginia from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 13. By its signature below, the City of Bristol, Virginia voluntarily agrees to the issuance of this Order.**

APPENDIX A

- 1. The Supplemental Environmental Project to be performed by the City of Bristol, Virginia is to construct a wetlands in Sugar Hollow Park as outlined in their proposal, submitted to and approved by TVA, as the property is owned by TVA, but administered by the City of Bristol, Virginia.**
- 2. The cost of the SEP to the City of Bristol, Virginia shall not be less than \$12,474.00 In the event that the final cost of the SEP is less than this amount, the City of Bristol, Virginia shall pay the remainder of the amount to the Commonwealth of Virginia, unless otherwise agreed by the Department.**
- 3. The City of Bristol, Virginia acknowledges that it is solely responsible for completion of the SEP project. Any delegation of funds, tasks, or otherwise by the City of Bristol, Virginia to a third party, shall not relieve the City of Bristol, Virginia of its responsibility to complete the SEP as contained in this Order.**
- 4. The SEP shall be completed by the City of Bristol, Virginia within 365 days after the Consent Order is issued.**
- 5. The City of Bristol, Virginia shall provide the Director, Southwest Regional Office of DEQ with verification of completion of the SEP by contacting the Southwest Regional Office of DEQ with the completion date. The project completion verification must be submitted to the Department within 7 days after the project completion date. Upon notification of the completion of the SEP by the City of Bristol, Virginia, DEQ staff will perform a site inspection to verify project completion.**
- 6. The City of Bristol, Virginia shall submit verification to the Director, Southwest Regional Office of DEQ in the form of contractor invoices and/or billing receipts of the final overall cost of the SEP within 30 days of the project completion date.**
- 7. In the event that the City of Bristol, Virginia publicizes the SEP or the results of the SEP, the City of Bristol, Virginia shall state in a prominent manner the project is part of a settlement for enforcement action.**
- 8. The Director, Southwest Regional Office of DEQ has the sole discretion whether the SEP has been completed in a satisfactory manner.**

**Robert Burnley, Director
Department of Environmental Quality**

The City of Bristol, Virginia voluntarily agrees to the issuance of this Order.

**Mr. Paul D. Spangler
City Manager**

Date: _____

Commonwealth of Virginia
City/County of _____

The foregoing document was signed and acknowledged before me this _____ day of
_____, 2002 by Paul D. Spangler,
City Manager of the City of Bristol, Virginia, on behalf of the City.

Date: _____

Notary Public

My commission expires: _____