Rise, Reclaim and Rebuild

U.S. Environmental Protection Agency
Office of External Civil Rights
Mail Code 2310A
1200 Pennsylvania Avenue NW
Washington, D.C. 20460
Filed via email to: *Title_VI_Complaints@epa.gov*

RE: Complaint Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and 40 C.F.R. Part 7 against the City of Baltimore and its agency the Baltimore City Department of Public Works

Dear Administrator Regan and Principal Deputy Assistant Administrator Segovia,

Pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and 40 C.F.R. Part 7, the Chesapeake Bay Foundation and the Environmental Integrity Project file this Complaint on behalf of the South Baltimore Community Land Trust ("Complainant" or "SBCLT") and its members. Complainant requests that U.S. Environmental Protection Agency ("EPA") investigate Baltimore City, and its agency, the Baltimore City Department of Public Works (collectively, "Recipients"), for their adoption and implementation of the City's 10-Year Solid Waste Management Plan ("SWMP" or "Plan"). As drafted, and adopted, the Plan disparately impacts residents of the predominantly Black and Hispanic communities of Cherry Hill, Mt. Winans, Brooklyn, Lakeland, Westport, and Curtis Bay.

INTRODUCTION

For decades, the Baltimore Refuse Energy Company ("BRESCO")[1] incinerator has been emblematic of the pervasive environmental injustices experienced by communities in its vicinity. The facility, which is situated among the communities of Cherry Hill, Mt. Winans, Brooklyn, Lakeland, Westport, and Curtis Bay (hereinafter the "Impacted Area") has been in operation

[1] BRESCO is owned and operated by WIN Waste Innovations, formerly trading as Wheelabrator Technologies. *10-Year Solid Waste Management Plan* (SWAMP), Baltimore City Department of Public Works, 37 (2024), https://publicworks.baltimorecity.gov/pw-bureaus/solid-waste/plan.

since 1985. While the impacts of the facility's operation were not immediately clear, residents in the area have since learned that BRESCO's operations are not only harmful, but in fact one of the most significant sources of pollution in Baltimore City.

As awareness of the harm associated with BRESCO's operation has grown, organized community action opposing the facility has been spurred by the combined advocacy operations of several key community organizations. SBCLT in particular formalized the operations of an earlier group formed in 2012 by a coalition of students and educators at Benjamin Franklin High School ("BFHS"). What was then the "Free Your Voice" student group, aimed to establish a space for discourse and action related to the excessive industrial pollution that students saw operating on a daily basis.[2] While students raised concerns about many facilities, advocacy coalesced around the siting of what would have been the largest incinerator in the nation.[3] The Free Your Voice participants learned that the now-canceled Energy Answers proposal, was set to be located less than a mile from BFHS, in the Fairfield area. Through their advocacy opposing the Energy Answers facility, members realized the residents in the area were either unaware that the facility was coming, or resigned to the fact that its development was inevitable.[4] Many of the residents that students spoke with shared stories of being displaced from other nearby neighborhoods as a result of industrial development.[5] When plans for the Energy Answers facility were ultimately canceled, the members of Free Your Voice decided to form an organization capable of addressing the community's needs, while also preventing the development of any future harmful activities.

In furtherance of its mission, SBCLT has worked to develop a campaign that specifically addresses pollution from the BRESCO incinerator, and advances policies that will meaningfully reduce the risk of harm to residents in the area. Starting in earnest in 2020, SBCLT representatives began participating in frequent meetings with staff from the Department of Public Works ("DPW"). These meetings were carried out with the express purpose of drafting a zero-waste plan that would outline the processes necessary to implement effective waste diversion practices and develop receiving infrastructure.[6] These discussions led to the development of "Baltimore's Fair Development Plan for Zero Waste" ("Zero Waste Plan"), which aimed to identify the root causes of the City's waste crisis and enable the City to move towards a "a new system of Fair Development aligned with human rights principles anchored to a Zero Waste framework."[7] One of the key components of this plan involved a recognition of the role that

[2] Attachment A – Declaration of Greg Sawtell, ¶¶5-9
[3] Attachment B – Declaration of Declaration of Shashawnda Campbell ¶¶ 12-15
[4] *Id,*
[5] *Id.*
[6] Attachment A - Declaration of Greg Sawtell ¶¶ 12-15
[7] Gary Liss et al., *Baltimore's Fair Development Plan for Zero Waste,* https://www.paperturn-view.com/?pid=MTk190967&p=3&v=3

BRESCO played in the City's waste system, and how its operation disproportionately impacted people of color and low-income communities in the area.[8]

Following a coordinated effort led by SBCLT, grassroots community leaders, Zero Waste Associates, and Baltimore City officials, the Zero Waste Plan was officially supported by the Baltimore City Council in March 2020.[9] Buoyed by this showing of support, and frequent supportive statements from Mayor Scott, advocates were hopeful that the Zero Waste Plan would eventually inform, and be incorporated into, the City's upcoming 10-Year Solid Waste Management Plan. Accordingly, when the City released its draft Plan for public consideration, members of SBCLT attended all available public meetings and submitted comments throughout the process. Unfortunately, this dedicated advocacy was ultimately met with inaction.

The final Plan made repeated references to an intent to meaningfully invest in diversion and recycling practices before ultimately concluding that, "[u]ntil there is universal, coordinated adoption of waste diversion practices across public and private sectors, it is likely that [BRESCO] will continue to operate at or near its current throughput."[10] In reaching this conclusion the City sets an untenable standard for reduced operation: "*universal*, coordinated adoption of waste diversion practices."[11] While Complainant recognizes the contribution of private actors to BRESCO's operation, it is unclear why the City itself has decided to reduce its own commitments. The final SWMP reduces previous diversion goals set by the city in earlier planning documents and places a premium on community behavioral change. Despite previous support for zero-waste initiatives and plans, the City has, in its most comprehensive planning document, seemingly placed a premium on behavioral change by residents while stepping away from diversion infrastructure investments.

The City's lack of urgency and apparent disinterest in meaningfully advancing diversion practices evidences an intent to continue allowing communities in the Impacted Area to bear the burden of BRESCO's operation. While SBCLT and others are prepared to continue advocating for practices that will encourage diversion, the success of Baltimore's zero waste initiatives should not be dependent on community driven advocacy. The City itself must make these investments, and adequately plan to do so.

PARTIES

I. Complainant

The South Baltimore Community Land Trust ("SBCLT") is a 501(c)(3) nonprofit organization dedicated to addressing the impacts of environmental, economic, and racial injustice

[8] *Id.* at 6.
[9] *See e.g., id.*
[10] SWMP, *supra* at 193.
[11] *Id*. (emphasis added).

by systematically acquiring and redeveloping land for community-centered purposes.[12] This work specifically aims to prevent the ability for extractive and harmful activities to propagate throughout South Baltimore, and in environmental justice communities in particular. [13]

SBCLT currently engages in a combination of land acquisition, housing redevelopment, and general environmental justice advocacy activities.[14] SBCLT's work is expanded through partnerships with numerous community organizations in the area, with an intentional focus on the communities of Cherry Hill, Mt. Winans, Brooklyn, Lakeland, Westport, and Curtis Bay. These communities are predominantly Black and Hispanic.

II. Federal Funding Recipient

The City of Baltimore has operated as an independent governmental unit since its separation from Baltimore County in 1851.[15] In the State of Maryland, Baltimore City is similarly situated with other county jurisdictions within the State.[16] As described below, Baltimore City is a recipient of federal funds.

The Baltimore City Department of Public Works ("DPW" or "Department") is a Baltimore City agency that supervises all public works and manages the City's water supply, street cleaning, sewage, and solid waste services.[17] The Department aims to "support the health, environment, and economy of [Baltimore City] and the region by providing customers with safe drinking water and keeping neighborhoods and waterways clean."[18] DPW's division includes the Bureau of Solid Waste, the Bureau of Water and Wastewater, and nine additional offices.[19] DPW is the agency tasked with developing and implementing the Baltimore City 10-Year Solid Waste Management Plan. DPW is a recipient of federal funds.

JURISDICTION

Title VI of the Civil Rights Act of 1964 ("the Act") states that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."[20] In order to effectuate this prohibition, the Act empowers federal

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[12] *Our Vision,* South Baltimore Community Land Trust, https://www.sbclt.org/about-sbclt/.
[13] *Id.*
[14] *See e.g.,* South Baltimore Community Land Trust, sbclt.org.
[15] *Baltimore City, Maryland,* Maryland Manual Online (April 19, 2024) https://msa.maryland.gov/msa/mdmanual/36loc/bcity/html/bcity.html.
[16] *Id.*
[17] *Public Works*, Maryland Manual online (April 7, 2023) https://msa.maryland.gov/msa/mdmanual/36loc/bcity/html/functions/bcitypublicworks.html.
[18] *Our Mission*, Baltimore City Department of Public Works, https://publicworks.baltimorecity.gov/about-pw.
[19] *Division Directory*, Baltimore City Dep't of Public Works, https://publicworks.baltimorecity.gov/about-pw (listing additional nine DPW offices: Asset management, compliance and research, engineering and construction, fiscal affairs, legal and regulatory affairs, legislative affairs, strategy and performance, sustainable energy, special projects. ").
[20] 42 U.S.C. § 2000d.

agencies to issue "rules, regulations, or orders of general applicability... consistent with the achievement of the objectives of the [Act]."[21]

EPA's Title VI regulations generally prohibit discrimination in any program or activity receiving EPA assistance under the Federal Water Pollution Control Act and the Environmental Financing Act of 1972.[22] Additionally, EPA specifically prohibits the use of "criteria or methods of administering [a] program or activity which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex."[23]

This Complaint satisfies the requirements of submission because it: (1) is in writing; (2) alleges a discriminatory act that violates EPA's nondiscrimination regulation; (3) identifies a recipient of EPA financial assistance as the entity that committed the alleged discriminatory act; and (4) is submitted within 180 calendar days.[24]

a. The10-Year Solid Waste Management Plan Disparately Impacts Residents in the Impacted Area.

Operation of the BRESCO incinerator contributes a substantial amount of pollution to the cumulative pollution burden borne by residents in the communities of Cherry Hill, Mt. Winans, Brooklyn, Lakeland, Westport, and Curtis Bay ("Impacted Area").[25] There are approximately 279 sites reporting to EPA in the Impacted Area as a whole,[26] and approximately 70 stationary industrial sources of air pollution regulated by the Maryland Department of the Environment ("MDE") in Brooklyn, Curtis Bay, and Hawkins Point (immediately southeast from Curtis Bay) alone.[27] Among these facilities is a medical waste incinerator, a landfill, and a coal transfer station.[28] All of which have had documented harmful impacts on the health and safety of communities in the area. Thus, despite BRESCO's arguably central location in the City, pollution from its operation disparately impacts the predominantly Black and Hispanic communities in the Impacted Area who bear a significant cumulative pollution burden.

As stated above, 40 C.F.R. § 7.35(b) specifically prohibits the use of "criteria or methods of administering [a] program or activity which have the effect of subjecting individuals to

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[21] 42 U.S.C. § 2000d-1.
[22] 40 C.F.R. § 7.30
[23] 40 C.F.R. § 7.35(b).
[24] 40 C.F.R. § 7.120; *see also* EPA, *Case Resolution Manual*, Programs and Projects of the Office of General Counsel (OGC), 5 (Jan. 2021), https://www.epa.gov/ogc/case-resolution-manual.
[25] *See, e.g.*, *Collaborative Investigation of Coal Dust, Air Pollution, and Health Concerns in Curtis Bay, South Baltimore, Maryland, USA, 2022-2023*, https://mde.maryland.gov/programs/permits/AirManagementPermits/Documents/FINAL_Full_CB%20Collab_%20Report.pdf [hereinafter "*Collaborative Investigation*"]; *see also* Matthew A. Aubourg et al., *Community-driven research and capacity building to address ej concerns with industrial air pollution in Curtis Bay, South Baltimore*, 3 Frontiers in Epidemiology (2023), https://www.frontiersin.org/articles/10.3389/fepid.2023.1198321/full.
[26] EPA, *Envirofacts*, https://enviro.epa.gov/ (Search Criteria: 1801 Annapolis Rd., Baltimore, MD; counted listed sited reporting to EPA in the Impacted Area).
[27] *Collaborative Investigations*, *supra*; *see also* Aubourg et al., *supra*.
[28] *Id.*

discrimination because of their race, color, national origin, or sex."[29] Through the development, adoption, and implementation of the 10-Year Solid Waste Management Plan for the City of Baltimore, the Recipients have engaged, and will continue to engage, in activities that will disparately impact residents in the Impacted Area. Contrary to the years of discussion and agreement on the need for a transition toward zero waste and away from incineration, the Plan resigns the City to continued reliance on and operation of the BRESCO waste incinerator at its historical rate,[30] and fails to plan or account for measures that would allow for the necessary diversion of waste or otherwise reduce reliance on BRESCO. This dynamic, and the relative pollution burden borne by residents in the Impacted Area in particular, is well known by the Recipients.

b. Baltimore City and the Department of Public Works are Recipients of Federal Funding

This Complaint identifies the City of Baltimore and the Baltimore Department of Public Works as recipients of EPA financial assistance. In 2021, EPA announced plans to provide $50 million dollars to Baltimore City "for environmental justice initiatives through funds allocated to EPA under the American Rescue Plan Act of 2021."[31] DPW specifically received $200,000 in federal grant funding to expand the YH_2O Career Mentoring Program.[32] In 2022, EPA granted the City of Baltimore $396 million in Water Infrastructure and Finance Innovation Act (WIFIA) financing to help fund projects to modernize water infrastructure across the City.[33] In 2023, The Mayor and City Council of Baltimore received a $4 million grant from EPA to develop a solar-powered, scalable composting facility co-located with the new East Side Transfer Station at Bowley's Lane.[34]

c. This Complaint has been submitted within 180 calendar days

This Complaint is timely submitted, in writing, to EPA for investigation pursuant to 42 U.S.C. Section 2000d and 40 C.F.R. Part 7.[35] The SWMP was signed and adopted by the Mayor

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[29] 40 C.F.R. § 7.35(b).
[30] SWMP, *supra* at 193, section 5.7.2.
[31] *EPA Administrator Visits City Water Plan to Announce $50 Million in National Environmental Justice Initiatives, Support for YH2O Program*, Baltimore City Department of Public Works (Jun. 25, 2021), https://publicworks.baltimorecity.gov/news/press-releases/2021-06-25-epa-administrator-visits-city-water-plant-announce-50-million.
[32] *Id*.
[33] *EPA to provide WIFIA Loans Totaling $396 million to Modernize Baltimore's Water Infrastructure,* Baltimore City Department of Public Works (Jan. 19, 2022), https://publicworks.baltimorecity.gov/news/press-releases/2022-01-19-epa-provide-wifia-loans-totaling-396-million-modernize-baltimore%E2%80%99s.
[34] *Investing in America through the Bipartisan Infrastructure Law Solid Waste Infrastructure for Recycling Grants Community Grants Fact Sheet,* EPA, https://www.epa.gov/system/files/documents/2023-09/Mayor_and_City_Council_of_Baltimore_SWIFR.pdf.
[35] Because the 180th day following the plans adoption on November 29th falls on May 27, 2024 (Memorial Day), this Complaint has been emailed to EPA on May 28th as directed in the draft guidance. *See* 65 FR 39672; *See also Federal Holidays,* OFFICE OF PERSONNEL MANAGEMENT*, https://www.opm.gov/policy-data-oversight/pay-leave/federal-holidays/*

and City of Baltimore on November 29, 2023 and approved by the Maryland Department of the Environment on January 29, 2024.[36] The final Plan was certified by Sean T. O'Donnell, PhD, PE on February 20, 2024.[37] Because the Plan will be implemented over the course of a 10-year period, EPA has continuing jurisdiction to review and address DPW's operations and actions taken in relation to or in furtherance of the SWMP.

FACTUAL BACKGROUND

South Baltimore began industrializing in 1853 when the Patapsco Land Company (also known as the Patapsco & Brooklyn Company and later the Curtis Bay Company) arrived with early plans to construct a "large bedroom community" at the north base of the Fairfield peninsula.[38] By 1892, the acting Commissioner of the State's Land Office had published a booklet on Maryland's industrial and natural resources. The acting Commissioner stressed that "the advantages of South Baltimore or Curtis Bay for manufacturing purposes cannot be overestimated."[39]

Over time, the Curtis Bay Company sold most of their land holdings on the peninsula of South Baltimore to the industry groups that continue to dominate the area. The Ellis Company opened one of the first oil companies in 1906 followed by The Prudential Oil Corporation in 1914 and the Texas Oil Company of Delaware (later known as Texaco). In 1909, the Davison Chemical Company moved its chemical plant to Curtis Bay. According to reports, by 1909, Curtis Bay was a "depressed working-class town with a population of about 8,000 and considered to be a "foreign-tenanted and rather remote suburb of Baltimore."[40]

In the late 1800s, Baltimore, like most industrial cities, faced a combination of social and environmental challenges stemming from sanitation services, industrial sewage, and ship discharge.[41] As the City rapidly industrialized and expanded in the late nineteenth century, elected and civic leaders began to recognize that its modest system of parks and squares did not meet the needs of its residents and that those amenities were not equally distributed.[42] However, instead of addressing these disparities, by the early twentieth century, block-by-block segregation became a pattern of practice in East, West, and South Baltimore.[43] Zoning laws were used as a tool to place racialized, low-income communities in heavy industrial districts. Baltimore City infamously implemented an aggressive redlining program that directly targeted Black

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[36] SWMP, *supra* at 2.
[37] *Id.*
[38] Philip Diamond, *An Environmental History of Fairfield/Wagner Point*, Univ. of Md. Sch. of L., 21 (1998).
[39] *Id*. at 51.
[40] *Curtis Bay once aspired to put Baltimore out of business*, Sun (March 7, 1909).
[41] Grove, M. *et al.*, *The Legacy Effect: Understanding How Segregation and Environmental Injustice Unfold over Time in Baltimore*, Annals of the American Association of Geographers (Oct. 2017).
[42] *Id.*
[43]Garrett Power, *Apartheid Baltimore Style: the Residential Segregation Ordinances of 1910*-1913, 42 Md. L. Rev. 289 (1983).

communities and communities of color. To this day, the City of Baltimore's racial makeup, specifically as it relates to individual neighborhoods, reflects those redlining practices.[44]

In the first half of the 20th century, the Fairfield peninsula became dominated by oil, gas, asphalt and other storage and transfer facilities. By the 1940's, most of the vacant lots on the peninsula were developed into war housing for workers, new industries, and storage yards. [45]Cherry Hill for instance, originated in the 1940's as the first planned African American suburb in the country. According to the Cherry Hill Transformation Plan (2020), city officials selected the location for its "isolated geography and close proximity to various sites hosting hazardous materials, including a trash dump and incinerator."[46] Six hundred units of housing were built for African American war veterans returning from WWII, later converted to low-income housing according to the 2020 Plan.

By the 1990's the residents of Brooklyn, Curtis Bay, Wagner's Point, Fairfield and Hawkins Point felt like they had become "a dumping ground for the city" as they were surrounded by landfills, incinerators, tank farms and the smoke plumes of heavy industry.[47] This sentiment led residents to push for a measure in the Maryland legislature to secede from the City and become annexed by Anne Arundel County.[48].

Today, the South Baltimore area remains heavily industrialized with residents struggling to eradicate defunct infrastructure, prevent the advancement of new industrial development, and promote development that benefits communities. Despite dedicated environmental justice advocacy among local residents, the legacy of past racially motivated housing policies and rampant industrialization remains.[49] The results are seen not only in the number of facilities

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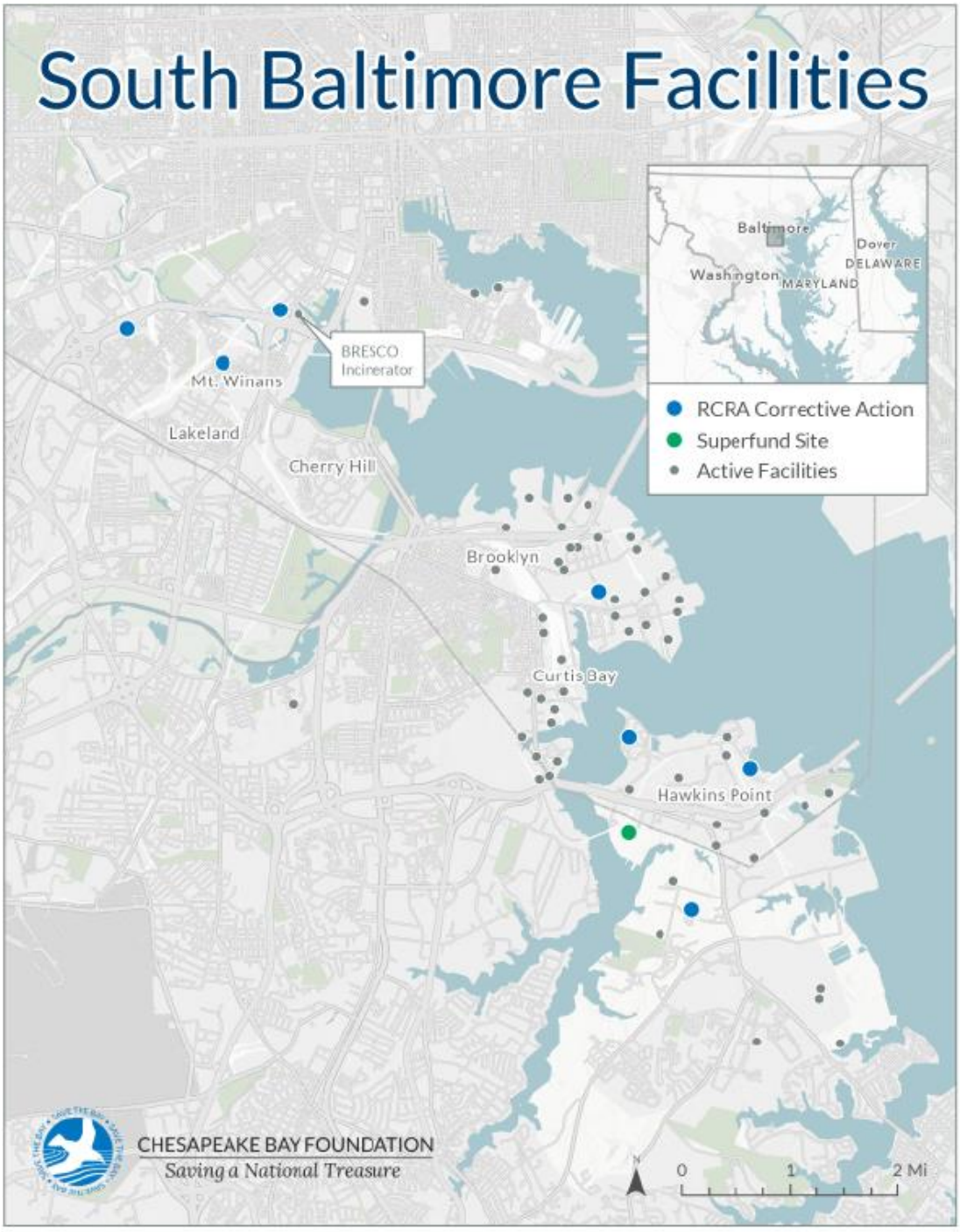
[44] *Id.*
[45] Diamond, *supra.*
[46] *Cherry Hill Transformation Plan,* Baltimore City Department of Planning (Apr. 16, 2020), available at: CherryHillTransformationPlan(FINAL).pdf (baltimorecity.gov)
[47] Paul W. Valentine, *Baltimoreans Want to Get Out of Town,* The Washington Post (Mar. 14, 1991), https://www.washingtonpost.com/archive/local/1991/03/15/baltimoreans-want-to-get-out-of-town/eb7829fc-b992-4e48-ae06-51f44480d779/
[48] *Id.*
[49] Chesapeake Accountability Project, *Comment Letter on Tentative Determination Renewal of the General Permit for Discharges from Stormwater Associated with Industrial Activities – 20-SW / MDR000*, 30 (Apr. 14, 2021), https://chesapeakeaccountability.org/sites/default/files/attachments/2021-04/cap-20sw-comment-ltr-final-w-appendices-041621.pdf *See, e.g.*, Aman Azhar, One a 'Toxic Tour' of Curtis Bay in South Baltimore, Visiting Academics and Activists See a Hidden Part of the City, *Inside Climate News*, Aug. 6, 2023, https://insideclimatenews.org/news/06082023/baltimore-harm-cityenvironmental-justice-neighborhoods/; Chesapeake Climate Action Network, "Curtis Bay Defeats the Energy Answers Incinerator: Massive waste-to-energy incinerator threatened residents' health", https://chesapeakeclimate.org/maryland/incinerators/curtis-bay/(describing proposal to build major waste-to-energy incinerator in Curtis Bay in 2009, and successful community opposition until its cancellation);.

present but in the health concerns and experiences of many individuals and families who reside there.[50]

I. Pervasive industrialization in the Impacted Area has led to untenable conditions that pose significant risks to the overall health and welfare of local residents.

The combination of favorable zoning conditions and lackluster environmental policy has culminated in the proliferation of harmful industrial activities in the Impacted Area. As of this filing, EPA's Envirofacts database indicates that there are 279 sites reporting to EPA in the Impacted Area.[51] The stressors associated with living in close proximity to these sites include persistent foul odors, dissemination of coal dust, varying sources of smoke pollution, and constant heavy truck traffic.[52] This concentration of facilities, and the resulting health risks, sets residents in the Impacted Area apart from the predominantly white communities directly across the Middle Branch of the Patapsco River who are equidistant but not equally impacted by BRESCO's operations and the City's continued reliance on those operations.

[50] *See, e.g.*, Aubourg, *et al.*, Community-driven research and capacity building to address environmental justice concerns with industrial air pollution in Curtis Bay, South Baltimore, *Frontiers of Epidemiology*, 12 September 2023, Vol. 3, at Table 1 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10720608/.
[51] *Envirofacts*, *supra*.
[52] Attachment B – Declaration of Shahshawnda Campbell, ¶7; Attachment E – Declaration of Angela Smothers ¶¶9, 12, 14


South Baltimore Facilities
Baltimore
Dover
DELAWARE
Washington
MARYLAND
BRESCO
Incinerator
Mt. Winans
Lakeland
Cherry Hill
Brooklyn
Curtis Bay
Hawkins Point
RCRA Corrective Action
Superfund Site
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a. CSX Coal Terminal/CSX Transfer Station

Though there are a significant number of facilities currently operating in the Impacted Area, several have emerged as particularly problematic actors. Among those is the CSX Coal Transfer Station, located in the Curtis Bay community. CSX's operation has plagued the area with coal dust covering cars, homes, and people for decades.[53,54] To this day, individuals in the Impacted Area spend multiple days a week removing black soot from their porches and windowsills.[55]

The operation of this facility has helped to make Baltimore one of the top coal exporters in the nation, responsible for more than 28% of national coal exports in 2023.[56] The consequences of this prolific operation were forced into the spotlight on December 30, 2021, residents in Curtis Bay and the Impacted Area in general, were shocked by an explosion at the CSX Coal Plant Building. Following the explosion residents reported fearing that there had been a bombing, as windows broke and buildings shook throughout the surrounding area.[57] Approximately, one year later investigations revealed that the explosion was the result of a buildup of methane gas inside of a poorly ventilated conveyor belt tunnel used to load coal onto ships.[58]

The lived experiences of residents were vindicated in a recently released study, "*Collaborative Investigation of Coal Dust, Air Pollution, and Health Concerns in Curts Bay, South Baltimore, Maryland, USA, 2022-2023,"* which assessed air and health impacts attributable to the operations of the CSX transfer station ("Community Coal Study").[59] The report, which was promulgated by a combined effort between community advocates (SBCLT and the Community of Curtis Bay Association), Johns Hopkins University, The University of Maryland, and the Maryland Department of the Environment ("MDE") identified coal particles in eight dispersed community locations during three separate rounds of sampling.[60] Sampling locations ranged from the area immediately outside of the terminal to three-quarters of a mile away, and included residences, businesses, a church, a park, and a school.[61] The Community Coal Study also determined that average particle pollution levels, as tested by community sensor

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[53]Attachment D - Declaration of Tiffany Thompson ¶11, Attachment E - Declaration of Angela Smothers ¶¶ 12-15
[54] *See, e.g.*, *Collaborative Investigations*, *supra*; *see also* Aubourg, *supra.*
[55] Attachment E - Declaration of Angela Smothers, ¶¶12-15
[56] U.S. Energy Information Administration, *What are the energy impacts from the Port of Baltimore closure*, Today in Energy (March 28, 2024), https://www.eia.gov/todayinenergy/detail.php?id=61663.
[57] Darcy Costello et al., *Explosion in Curtis Bay CSX coal silo shakes Baltimore, but so far no injuries reported, officials say*, The Baltimore Sun (Dec. 30, 2021), https://www.baltimoresun.com/2021/12/30/explosion-in-curtis-bay-csx-coal-silo-shakes-baltimore-but-so-far-no-injuries-reported-officials-say/.
[58] Cassidy Jensen, *Methane gas buildup in coal tunnel caused Curtis Bay coal silo explosion, CSX says*, The Baltimore Sun (Aug. 25, 2022), https://www.baltimoresun.com/2022/08/25/methane-gas-buildup-in-coal-tunnel-caused-curtis-bay-coal-silo-explosion-csx-says/.
[59] *See e.g., Collaborative Investigations*, *supra*; *see also* Aubourg, *supra.*
[60] *New Scientific Study Confirms Coal Dust in Curtis Bay Community,* Maryland Department of the Environment (Dec. 14, 2023), https://news.maryland.gov/mde/2023/12/14/new-scientific-study-confirms-airborne-coal-dust-in-curtis-bay-community/.
[61] *Id.*

networks, were higher than at nearby MDE regulatory monitors.[62] This study has served a critical role in compiling experiences of residences, highlighting the multi-generational impacts of its operations, and confirming facts that had, up until that point, been perceived as largely anecdotal.

b. Curtis Bay Energy Medical Waste Incinerator

The Impacted Area also hosts Curtis Bay Energy, the nation's largest medical waste incinerator.[63] The medical waste incinerator has always been a source of concern, with residents often spotting used medical waste that has fallen off of transport trucks littering the street.[64] Notably, in 2017 only 5.8% of the waste burned at Curtis Bay Energy came from Baltimore City, the rest was imported from 18 states, Washington, D.C., and Canada.[65] In October 2023, the incinerator operator pled guilty to 40 separate counts related to "systemic, improper, and unsafe handling, transport, and disposal of insufficiently incinerated special medical waste."[66] Curtis Bay Energy was required to pay a one million dollar fine and contribute $750,000 to a Supplemental Environmental Fund administered by the Chesapeake Bay Trust.[67] Just a few months later in March of 2024, MDE filed an additional lawsuit against Curtis Bay Energy, seeking a court order to require necessary repairs and civil penalties.[68] The 2024 suit highlighted multiple emission violations (PM2.5, Carbon Monoxide, Hydrogen Chloride), and the repeated release of black smoke from improper channels that did not pass through the medical waste incinerator's air pollution control mechanisms.[69]

c. Quarantine Road Landfill

The Quarantine Road Landfill ("QRL") is a 153-acre municipal landfill located in Hawkins Point, directly across Curtis Creek from Curtis Bay and southeast of the Impacted Area as whole.[70] The landfill, which is owned by the City and operated by DPW's Bureau of Solid Waste, is currently expected to reach its permitted capacity in 2028,[71] prompting plans for an expansion.[72] Like CSX and Curtis Bay Energy, QRL has a history of noncompliance. Through its coverage under the Maryland General Permit for Discharges of Stormwater Associated with

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[62] *Collaborative Investigations*, *supra*; *see also* Aubourg, *supra.*
[63] *Attorney General Anthony Brown Announces Guilty Plea and Sentencing of Curtis Bay Energy, LP – Owner of Largest Medical Waste Incinerator in the United States*, Maryland Department of the Environment (Oct. 17, 2023), https://news.maryland.gov/mde/2023/10/18/attorney-general-anthony-brown-announces-guilty-plea-and-sentencing-of-curtis-bay-energy-lp-owner-of-largest-medical-waste-incinerator-in-the-united-states/.
[64] Att. D - Declaration of Tiffany Thompson ¶12.
[65] Kelsey Brugger, *The medical waste crisis that didn't happen – yet*, E&E News (Aug. 19, 2020), https://www.eenews.net/articles/the-medical-waste-crisis-that-didnt-happen-yet/.
[66] Christian Olaniran, *South Baltimore medical waste company hit with $1 million+ fine for environmental violations*, CBS News (Oct. 17, 2023), https://www.cbsnews.com/baltimore/news/attorney-general-brown-to-announce-penalty-in-environmental-criminal-case/.
[67] *Id.*
[68] *Maryland Department of the Environment v. Curtis Bay Energy,* Civil Case No. (), https://mde.maryland.gov/Documents/Complaint_filed_3-14-2024.pdf.
[69] *Id.*
[70] SWMP, *supra* at 76.
[71] *Id.*
[72] *FY2023 Capital Improvement Program Presentation, Bureau of Solid Waste,* Baltimore City Department of Public Works (Jan. 2022), *https://planning.baltimorecity.gov/sites/default/files/FY23%20CIP%20Slides%20-%20Solid%20Waste.pdf.*

Industrial Activities ("General Permit")[73], QRL discharges stormwater to Curtis Creek, Curtis Bay, and the Patapsco River. According to inspection reports, QRL has noted that stormwater from its site has likely been exposed to leachate, trash, and sediment.[74] A series of inspections conducted by MDE confirmed this exposure as well as inadequate cover and exposed waste, and sediment laden water flowing offsite via a series of outfalls.[75]

QRL also emits methane, a potent greenhouse gas approximately 80 times more effective at warming the climate than carbon dioxide on a 20-year scale, [76] and health-harming pollutants like benzene,[77] a known carcinogen.[78] In 2021 QRL accepted 130,000 tons of municipal solid waste ash from BRESCO which accounts for roughly 37% of the 355,000 total tons of waste received in that same year.[79] The incinerator ash is transported via truck along a route that travels through the communities in the Impacted Area. Despite QRL's persistent violations and its contributions to the cumulative pollution burden, MDE recently renewed the landfill's coverage under the General Permit, declining to regulate it through a tailored individual permit.[80]

d. Fires, leaks, and explosions

In addition to the 2021 CSX terminal explosion discussed above, residents of the Impacted Area have been subjected to fires and chemical leaks from the nearby industrial facilities. In 2017, a shelter-in-place order was issued in after a sulfuronic acid leak created a white cloud that was visible to residents.[81] In 2022, shortly after the coal terminal explosion, a fire at a petroleum facility in the Impacted Area killed an employee on site.[82] In May of 2023, nitric acid leaked from the W.R. Grace chemical plant in the Impacted Area.[83] The last incident, on the heels of the previous events, prompted the Community of Curtis Bay Association to call

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[73] General Permit for Discharges from Stormwater Associated with Industrial Activities
[74] Attachment H - CBF/EIP Letter to MDE at 2.
[75] *Id.* at 3.
[76] *See, e.g.,* MDE, *Technical Support Document COMAR 26.11.42 – Control of Methane Emissions from Municipal Solid Waste Landfills*, Appendix B (Dec. 15, 2022), https://mde.maryland.gov/programs/regulations/air/Documents/Technical%20Support%20Document%20-%20Control%20of%20Methane%20Emissions%20from%20MSW%20Landfills%20-%20Final%20w%20appendices.pdf
[77] 2020 Quarantine Road Landfill Emissions Certification Report ("ECR").
[78] Centers for Disease Control, *Facts About Benzene*, Emergency Preparedness and Response (April 4, 2018), https://emergency.cdc.gov/agent/benzene/basics/facts.asp.
[79] SWMP, *supra* at 77.
[80] *See e.g.,* Leslie Smith, *The Environmental Injustice of Industrial Stormwater Pollution in Baltimore, Maryland*, Vt. L. Rev. (May 10, 2024), https://lawreview.vermontlaw.edu/the-environmental-injustice-of-industrial-stormwater-pollution-in-baltimore-maryland/.
[81] *Bay After Acid Spill, Nearby Residents Still Worried About Their Health*, CBS News (Sept. 19, 2017), https://www.cbsnews.com/baltimore/news/acid-spill/.
[82] Barry Simms, *MOSH review of Curtis Bay fuel facility finds 16 violations, 12 serious,* WBALTV11 (June 16, 2022), https://www.wbaltv.com/article/mosh-review-curtis-bay-fuel-facility-finds-16-violations/40313838.
[83] Christine Condon and Dillon Mullan, *Nitric acid chemical leak reported in Baltimore's Hawkins Point*, The Baltimore Sun (May 20, 2023), https://www.baltimoresun.com/2023/05/20/nitric-acid-chemical-leak-reported-in-baltimores-hawkins-point/.

for MDE to declare an air pollution emergency to address the cluster of pollution sources and harmful effects.[84]

e. Truck Traffic

Communities in the Impacted Area are also heavily impacted by pollution associated with heavy duty and light duty vehicle emissions, though a significant portion of the impacts in the area are most likely attributable to industrial truck traffic. In addition to trucks traveling between BRESCO and QRL, residents in the Impacted Area also share their roads with trucks carrying waste to Curtis Bay Energy[85] and trucks associated with the operation of the CSX Coal Terminal.[86] The Community Coal Study referenced above noted that "heavy diesel truck traffic is a significant mobile source of pollution in Curtis Bay."[87]

The Study employed the use of the National Oceanic and Atmospheric Administration's Air Resources Car ("NOOA's ARC") to evaluate the presence of methane and black carbon (pollutants commonly associated with truck traffic and human health impacts) in the Curtis Bay community. NOAA's ARC collects data every second while it is operating and has driven throughout the City of Baltimore detecting "hot spots" for poor air quality.[88] While the ARC detected black carbon throughout the City, concentrations in Curtis Bay, Brooklyn, Hawkins Point, and the Canton Industrial Area appeared the most significant, demonstrating frequent observations of black carbon levels above 1.63 mg m^{-3} (the 90th percentile).[89] For methane, the most significant concentrations were located in Hawkins Point, Curtis Bay, and Downtown Baltimore, with the highest density of measured carbon concentrations in Curtis Bay, Brooklyn, and Hawkins Point.[90] The Study also notes that it is difficult to isolate the causes of high methane levels in Curtis Bay because of the numerous sources in the area capable of contributing methane pollution.[91]

Additionally, the Impacted Area is in close proximity to several major highways including I-95, I-295, and I-895. A report from the Union of Concerned Scientists assessing exposure to diesel particulate pollution in Maryland noted that exposure is "especially high along I-95, passing through Baltimore and feeding into I-495 around DC…"[92] This fact is reflected in the

[84] *Call for Declaration of Air Pollution Emergency in Curtis Bay*, Community of Curtis Bay Association (May 19, 2023), https://ilovecurtisbay.com/2023/05/19/call-for-declaration-of-air-pollution-emergency-in-curtis-bay/.
[85] Att. D- Declaration of Tiffany Thompson ¶12.
[86] *Collaborative Investigations*, *supra*; *see also* Aubourg et al., *supra*.
[87] *Id.* at 6
[88] *Id.* at 18
[89] *Id.* at 20.
[90] *Id.* at 23
[91] *Id.* at 24.
[92] Kevin X. Shen, *Exposure to Diesel Particulate Pollution in Maryland*, Union of Concerned Scientists (Mar. 14, 2022), https://www.ucsusa.org/resources/diesel-pollution-md#read-online-content.

EJSCREEN data for each of the identified census blocks in the Impacted Area, which indicate that 19 of the 23 census blocks register above the 90th percentile for Diesel PM exposure.[93]

It is against this backdrop that the City approached the SWMP. Though the presence of these operations and their cumulative threat to communities in the Impacted Area was well known, the Recipients ultimately decided to draft, adopt, and implement a Plan that not only suggests the likelihood of continued operation of the BRESCO incinerator at or near its current rate, but also fails to invest in or identify infrastructure capable of reducing said operation.

II. The City of Baltimore has consistently allowed BRESCO to enjoy favorable operating conditions.

For decades, BRESCO has reaped the benefits of its unique position in the regional waste management system and largely favorable operational policies. Through supportive legislation and reduced operating costs, Baltimore City has made it easier for the facility to operate, while simultaneously allowing the continued burdening of residents in the Impacted Area.

a. Maryland Renewable Portfolio Standards Legislation

Since 2004 Maryland has maintained a Renewable Portfolio Standard ("RPS").[94] Ostensibly, the law aims to "recognize and develop the benefits associated with a diverse portfolio of renewable resources to serve Maryland."[95] The RPS program aims to promote the operation of renewable energy facilities by requiring electricity suppliers to offset their operation through the purchase of Renewable Energy Certificates ("RECs").[96] RECs are issued when one megawatt-hour (MWh) of electricity is generated and delivered to the electricity grid from a renewable source.[97] Maryland's RPS program operates by organizing renewable sources into Tier 1 Solar, Tier 1, and Tier 2 renewable sources. Credits from Tier 1 Solar Sources are the most expensive, followed by Tier 1, and then Tier 2.[98] For example, the cost of Tier 1 RECs has steadily increased from $0.94 in 2008 to $17.80 in 2022. Comparatively, Tier 2 RECs increased from $0.56 to $7.42 in that same time period.[99]

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[93] *See Table 4, infra.*
[94] H.D. 1308, 2004 Reg. Sess. (Md. 2004), https://mgaleg.maryland.gov/mgawebsite/Search/Legislation?target=/2004rs/billfile/HB1308.htm (creating the RPS with waste-to-energy in Tier 2).
[95] *Maryland Renewable Energy Portfolio Standard Program – Frequently Asked Questions,* MARYLAND PUBLIC SERVICE COMMISSION, https://www.psc.state.md.us/electricity/maryland-renewable-energy-portfolio-standard-program-frequently-asked-questions/#:~:text=The%20objective%20of%20Maryland's%20Renewable,benefits%20associated%20with%20renewable%20energy.
[96] *See e.g., Renewable Energy Portfolio Standard Report,* PUBLIC SERVICE COMMISSION OF MARYLAND, (Nov. 2022), available at: https://www.psc.state.md.us/wp-content/uploads/CY21-RPS-Annual-Report_Final.pdf.
[97] EPA, *Renewable Energy Certificates,* Green Power Markets (Jan. 15, 2024), https://www.epa.gov/green-power-markets/renewable-energy-certificates-recs#one.
[98] *See e.g., Renewable Energy Portfolio Standard Report,*
[99] Public Service Commission of Maryland, *Renewable Energy Portfolio Standard Report*, 8 (Nov. 2023), https://www.psc.state.md.us/wp-content/uploads/CY22-RPS-Annual-Report_Final-w-Corrected-Appdx-A.pdf.

As a "waste-to-energy" facility, BRESCO and its peers were considered Tier 2 sources when the RPS program was initiated. However, in 2011 the Maryland legislature codified Senate Bill 690, which "expand[ed] the definition of a Tier 1 renewable source to include waste-to-energy and refuse-derived fuel."[100] This change subsidized the operation of the three waste incinerators operating under the RPS program: BRESCO, the Montgomery County Resources Recovery Facility, and the Covanta Fairfax Facility in Virginia.[101] As a result, BRESCO has collected millions in subsidies. A recent analysis by Public Employees for Environmental Responsibility ("PEER") estimated that Wheelabrator likely received around $4.2 million in 2022 under this program.[102]

This subsidy was, and has continued to be, in tension with the goals of the RPS program because of the significant environmental harm caused by the operation of municipal solid waste incinerators. As discussed above, BRESCO emits harmful toxic pollutants which contribute to negative health outcomes such as asthma and other respiratory illnesses. A recent study concluded that "incinerators emit more greenhouse gas emissions per unit of electricity produced… than any other power source" and those same incinerators "emit more criteria pollutants than replacement sources of energy, such as natural gas."[103] This harmful dynamic is one that EPA itself has recognized, proposing stronger standards in early 2024 for the operation of large municipal waste combustors.[104] In doing so, EPA Administrator Michael Regan states that "[b]y reducing harmful pollution and improving air quality, this rule will also advance environmental justice for nearby communities."[105] Though the City once shared this perspective, in the months following the adoption of the SWMP, it has reversed course.

In recognition of the toxic dynamic of the RPS subsidizing waste-to-energy facilities, advocates and residents have attempted to reverse the categorization of waste-to-energy facilities as Tier 1 operators over the course of eight (8) separate legislative sessions in Maryland.[106]

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[100] S. 690, Chapter 519, 2011 Reg. Sess. (Md. 2011), https://mgaleg.maryland.gov/2011rs/chapters_noln/Ch_519_sb0690E.pdf.

[101] *See e.g., Renewable Energy Portfolio Standard Report,* at 25.

[102] PEER, *Maryland's Energy Subsidies Are Going Up in Flames* (March 2024), https://peer.org/report-maryland-energy-subsidies-in-flames/.

[103] Tangri, Neil, *Waste Incinerators undermine climate goals,* PLOS Climate (Jun. 1, 2023), https://journals.plos.org/climate/article?id=10.1371/journal.pclm.0000100.

[104] EPA, *EPA proposed stronger air pollution standards for large facilities that burn municipal solid waste* (Jan. 11, 2024), https://www.epa.gov/newsreleases/epa-proposes-stronger-air-pollution-standards-large-facilities-burn-municipal-solid.

[105] *Id.*

[106] H.D. 690, 2011 Reg. Sess. (Md. 2011) (moving waste-to-energy to Tier 1 and adding refuse-derived fuel to Tier 1); S. 282, 2018 Reg. Sess. (Md. 2018) (amended on the floor by Senator Hough to eliminate waste-to-energy from the RPS. Passed the Senate but not the House); S. 548, 2019 Reg. Sess. (Md. 2019) (eliminating waste-to-energy and refuse-derived fuel from the RPS. No vote); S. 516, 2019 Reg. Sess. (Md. 2019) (Clean Energy Jobs Act, originally eliminated waste-to-energy and refuse-derived fuel from the RPS but that was amended out); S. 560, 2020 Reg. Sess. (Md. 2020) (eliminating waste-to-energy and refuse-derived fuel from the RPS); H.D. 1362, 2021 Reg. Sess. (Md. 2021) (Hogan's CARES act, eliminating trash incineration and refuse-derived fuel from the RPS as part of his bigger climate package); S. 65, 2021 Reg. Sess. (Md. 2021) (attempted amendment on the floor by Senator Hough to eliminate waste-to-energy from the RPS was rejected); H.D. 332, 2021 Reg. Sess. (Md. 2021) (eliminating

During the 2023 legislative session, the City informed the members of the House Economic Matters Committee of their support for the effort, stating that it "ma[de] critical climate focused changes to Maryland's [RPS]."[107] In the same letter the City also noted that the current bill "reflect[ed] a multi-year effort to clean up Maryland's RPS, aligns renewable energy regulations with statewide climate justice and sustainability goals, and opens the city up to waste management alternatives that promote environmental justice, zero waste planning and opportunities to capture the value of materials in the current waste stream."[108] While the bill proposed in 2023 did not advance, advocates were heartened by the City's stance and resolved to pursue the effort again in the next legislative session.

Unfortunately, in a surprising departure from its previous stance, the City officially took no position on the bill when the opportunity arose again in 2024. In a letter of information shared with the members of Senate Energy, Education, and the Environment Committee, the City effectively advocated for BRESCO to maintain its status as a Tier 1 source. The letter states:

> "…the removal of waste to energy and refuse to energy from Tier 1… would not have a known direct financial impact on the City of Baltimore considering the waste to energy facility located within the City, the Wheelabrator Facility, is privately operated. However, if the removal of these credits were to cause the facility to close, Baltimore City finances and operations as they relate to waste management would likely be significantly affected."[109]

This reversal is ultimately evidence of one of the City's earliest actions implementing the SWMP. By signaling that any financial pressures on BRESCO would place the city in a difficult financial position of its own, the City helped to ensure that BRESCO's operations remained financially viable, and effectively prolonged harm to residents in the Impacted Area.

b. City air pollution control law and settlement agreement

In 2019, after years of community advocacy seeking improvements at BRESCO, the City passed the Baltimore City Clean Air Act ("BCAA"), which imposed on BRESCO lower air pollution limits and stronger monitoring requirements for several pollutants. After the BCAA was essentially struck down in federal district court, the City entered a settlement agreement in 2020 with Wheelabrator in which the company agreed to accept some of the limits that were in

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waste-to-energy and refuse-derived fuel from the RPS); H.D. 11, 2022 Reg. Sess. (Md. 2022) (eliminating all polluters from the RPS); H.D. 718, 2023 Reg. Sess. (Md. 2023) (eliminating waste-to-energy, refuse-derived fuel, anaerobic digestion, and biomass from the RPS); H.D. 166, 2024 Reg. Sess. (Md. 2024) (eliminating waste-to-energy and refuse-derived fuel from the RPS).

[107] Letter from Mayor Brandon M. Scott to Members of the Maryland House Economic Matter Committees (Mar 9, 2023), available at: 1Of2EzgunmxYIU_oFgD9RBahk79PmL3vE.pdf (maryland.gov)

[108] *Id.*

[109] Letter from Mayor Brandon M. Scott to Members of the Maryland Senate Energy, Education and the Environment Committee (Jan. 25, 2024), available at: 1bGFkXfoVnGRZ6AQkO37fVecAX-LQf01G.pdf (maryland.gov)

the BCAA.[110] These limits became effective at the end of 2023.[111] While these limits were stronger than those in effect at the time the settlement agreement was reached, this is largely because the EPA has failed to update federal air pollution control standards for incinerators as required by the federal Clean Air Act ("CAA"). The current standards (the same as those that were in effect when the settlement agreement was reached) are out-of-date and far less stringent than required by the CAA.

As a result of the settlement between BRESCO and the City, WIN Waste Innovations reportedly invested $45 million in capital improvements at BRESCO to meet the proposed BCAA emission limits.[112].While on its face BRESCO's upgrades represent a significant investment in the facility, in actuality the cost of capital improvements will effectively be passed to customers – with the City being one of its largest customers –via the tip fee structure (a disposal fee, usually assessed per ton of waste).[113] Because of this dynamic, BRESCO is duly profiting off of the State of Maryland and the City of Baltimore all while receiving favorable rates for its own disposal. This mutually beneficial financial relationship has over time become symbiotic at the operational level. All the while the sunk costs associated with its operation are passed on to the residents in the Impacted Area working to keep up with ever evolving health costs.

In January 2024, EPA proposed revisions to its current air pollution standards for large municipal waste combustors ("LMWCs"). Table1 below presents a comparison between EPA's proposed limits and those to which BRESCO is currently subject, identifying the limits that derive from the settlement agreement. As clearly shown, the proposed EPA limits, which are not even as stringent as they arguably should be, are significantly lower than the settlement agreement limits.

Table 1: EPA Proposed Pollution Limits for Existing Incinerators v. Current BRESCO Limits

Pollutant	**Unit of Measure***	**EPA Proposed Standard (Emission Guidelines)**		**Current BRESCO Lowest Limit**		
		Limit	**Averaging Period**	**Limit**	**Averaging Period**	**Origin of Limit ****
Cadmium (Cd)	Mcg/dscm	1.5		25		City settlement
Lead (Pb)	Mcg/dscm	56		250		City settlement

[110] Att. I – Baltimore City/BRESCO Agreement
[111] *Id.*
[112] Cody Boteler, *Baltimore's incinerator made pollution control upgrades last summer. Are they enough?*, The Baltimore Banner (Feb. 11, 2024), https://www.thebaltimorebanner.com/community/climate-environment/baltimores-incinerator-made-pollution-control-upgrades-last-summer-are-they-enough-RZZHEBEV6ZGILHEFBF7QM46GR4/
[113] Geosyntec Consultants, Inc., *Task 7 Report*, City of Baltimore Recycling and Solid Waste Management Master Plan, 41 (April 15, 2020), https://publicworks.baltimorecity.gov/sites/default/files/LWBBTask7ReportFINAL4-15-20.pdf.

Particulate Matter (PM)	Mg/dscm	7.4		25		Current EPA limit
Mercury (Hg)	Mcg/dscm	12		15		City settlement
PCDD/PCDF (dioxin/furan)	Ng/dscm	7.2		15 Ng/dscm ---------- 2 Ng TEQDF-WHO98*		City settlement
Hydrochloric Acid (HCl)	ppmvd	13		29		EPA limit
Sulfur Dioxide (SO2)	ppmvd	20	24-hour	18	24-hour	City settlement
Nitrogen Oxides (NOx)	ppmvd	110	24-hour	105 ppm	30-day	City settlement
Carbon Monoxide (CO)	ppmvd	100	4-hour	100	4-hour	EPA limit

*All units expressed at 7% oxygen
** BRESCO is subject to emission limits under EPA's current rules for existing incinerators, which, as federal limits, are subject to additional compliance requirements and are enforceable in federal court by EPA and members of the public. BRESCO is also subject to emission limits under a recent settlement agreement with Baltimore City that are not federally enforceable. This column identifies the lowest limit to which BRESCO is subject and whether that limit derives from the settlement agreement or EPA's current rules.
*** One of the City settlement dioxin limits is expressed in units of ng TEQDF-WHO98* which is not directly comparable to the dioxin limits expressed in units of ng/dscm.

Despite the improvement represented by EPA's proposed regulatory revisions,[114] there are still many gaps left in the proposed rule. In March 2024, Complainant joined several groups in submitting comments to the EPA noting these gaps and calling for additional changes. Among other things, complainants noted the following shortcomings in the proposed rule: (1) the proposed pollution limits must be further strengthened to comply with the CAA mandate that incinerators reduce emissions to the maximum achievable extent; (2) additional health-harming pollutants from incinerators must be regulated, including polychlorinated biphenyls ("PCBs") and polycyclic organic matter ("POM"); (3) continuous monitoring must be mandated for more pollutants; and (4) waste-sorting should occur before combustion.[115]

[114] In addition to proposing lower emission limits, EPA has also proposed to remove illegal exemptions during startup, shutdown, and malfunction periods, and require electronic reporting.
[115] Complainant joined EIP, Earthjustice, and several other groups in submitting comments to EPA on the proposed standards. The full technical comments are available here https://earthjustice.org/wp-content/uploads/2024/03/2024-03-25-lmwc-proposed-rule-comments.pdf and a summary sign-on letter is available here https://earthjustice.org/wp-content/uploads/2024/03/2024-03-25-lmwc-proposed-rule-sign-on-letter.pdf.

III. Following years of promises to reduce reliance on BRESCO, the City ultimately failed to realize those intentions in the Baltimore City 10-Year Solid Waste Management Plan.

In 2023, the DPW announced its plans to develop Baltimore City's 10-Year Solid Waste Management Plan. The Plan "consolidates goals for managing the City's solid waste stream, assessing the solid waste collection systems, current and future disposal needs, and how zero waste strategies like reuse recycling and composting are to be implemented."[116] As part of the development process, DPW hosted a phased public comment process for each of four draft plans (30%, 60%, 90%, and 99% complete). DPW's Bureau of Solid Waste (BSW) lead SWMP planning with input from the Bureau of Water and Wastewater, the Office of Sustainability, the Departments of Health, Housing, Planning and more.[117]

The Bureau of Solid Waste received over 700 comments throughout the planning process.[118] Comments were made on multiple platforms, including email, Konveio (a platform that allows comments to be added directly on the draft), and testimony at public meetings.[119] SBCLT, community groups, Impacted Area residents, and other members of the public submitted numerous comments regarding the need for a plan with specific, measurable strategies that would effectively plan for a transition away from incineration at BRESCO.

The community's comments were consistent with a years-long advocacy effort to move Baltimore toward a "zero waste" system. On the heels of multiple meetings with DPW staff, the development of a Zero Waste Report, the promise of several composting initiatives, and the procurement of grants, advocates hoped to see the result of their conversations with the City reflected in the final Plan.

The final draft was sent to MDE for technical review in April 2023, and edits were incorporated into the final draft, which was made public in May 2023.[120] When the final draft was released, SBCLT members and residents in the Impacted Area felt that the City's position on zero waste evidenced a complete reversal and lack of commitment to meaningfully reducing reliance on the incinerator.[121]

TITLE VI VIOLATIONS

The Civil Rights Act empowers federal agencies to "effectuate the provisions" of Section 601 by issuing "rules, regulations, or orders of general applicability."[122] Accordingly, EPA's Title

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[116] SWMP, *supra*.
[117] BSW contracted with Geosyntec Consultants to write the plan, and incorporate feedback from stakeholders in accordance with the regulations set by MDE.
[118] *10 Year Solid Waste Management Plan,* BALTIMORE CITY DEPARTMENT OF PUBLIC WORKS, HTTPS://PUBLICWORKS.BALTIMORECITY.GOV/PW-BUREAUS/SOLID-WASTE/PLAN
[119] *Id*.
[120] SWMP, *supra*.
[121] *See e.g.,* Att. B -Declaration of Shahshawnda Campbell
[122] 42 U.S.C. § 2000d-1.

VI regulations generally prohibit discrimination in any program or activity receiving EPA assistance under the Federal Water Pollution Control Act and the Environmental Financing Act of 1972.[123] Additionally, EPA specifically prohibits the use of "criteria or methods of administering [a] program or activity which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex."[124]

For purposes of EPA's regulations, disparate impact is defined as "a measurement of a degree of difference between population groups for the purpose of making a finding under Title VI. Disparities may be measured in terms of the respective potential level of exposure, risk or other measure of adverse impact."[125] In order to support a disparate impact claim, complainants must (1) identify the specific policy at issue; (2) identify the adversity and/or harm alleged; (3) establish a significant disparity through the use of "appropriate statistical measures;"[126] and (4) "allege a causal connection between a facially neutral policy and a disproportionate and adverse impact on minorities."[127]

I. The Baltimore City 10-Year Solid Waste Management Plan is a policy within the meaning of 40 C.F.R. Part 7

In light of its prescriptive nature and its posture in Maryland's environmental regulatory scheme, the SWMP and its provisions constitute an action subject to scrutiny under Title VI. EPA's regulations define "program or activity" to mean "*all* of the operations of any entity described in, the definition, including "[a] department, agency, special purpose district, or other instrumentality of a State or of a local government," as well as "the entity of such state or local government that distributes such assistance and each such department or agency to which the assistance is extended."[128] Here, Complainant alleges that Recipient's adoption of the SWMP has and will continue to disparately impact residents in the Impacted Area.

The SWMP's status as a policy that the Recipients intend to rely on is evidenced by its positioning in comparison to the City's Recycling and Solid Waste Master Plan, which was prepared as part of the Less Waste, Better Baltimore Initiative ("LWBB"). The purpose of the Recycling and Solid Waste Master Plan is to "outline a clear and realistic future vision for improving Baltimore City's solid waste and recycling system…"[129] Further, Maryland statute states that "[a]fter the county governing body adopts [the SWMP], a person shall follow the provisions of that plan except to the extent that [MDE] modifies or disapproves that plan."[130] In differentiating between the SWMP and the LWBB Plan, the Department noted that "[t]he Ten-

[123] 40 C.F.R. § 7.30.
[124] 40 C.F.R. § 7.35(b).
[125] 65 F.R. 39665.
[126] *S. Camden Citizens in Action v. N.J. Dep't of Env't. Prot.*, 145 F. Supp. 2d 446, 491 (2001).
[127] *N.Y.C. Env'tl Justice All. V. Giuliani,* 214 F.3d 65, 69 (2d Cir. 2000).
[128] 40 C.F.R. § 7.25.
[129] *Task 7 Report*, *supra* at 5.
[130] MD Code Ann., Environment, § 9-507(e)(2).

Year Solid Waste Plan is a more *prescriptive and informational* document required to assure [MDE] that a jurisdiction is capable of managing its solid waste at least 10 years into the future."[131]

Consistent with this positioning, Baltimore City is legally required to develop the SWMP and receive approval to implement it, from MDE. DPW describes the plan as "a regulatory plan submitted to [MDE] to map operational needs, constraints and improvements for waste management within the City for the next 10 years." State law requires each county to have a plan that is approved by MDE, covers at least the next 10-year period following adoption by the county governing body, and deals with solid waste disposal, solid waste, acceptance facilities, and the systematic collection and disposal of solid waste.[132] The regulations impose further requirements for the development of plans and the submission of recycling plans.[133] MDE approved the SWMP on January 29, 2024.[134]

Accordingly, in light of the Recipients stated understanding of the SWMP, and the State regulatory framework requiring its development and implementation, the Plan is a policy subject to scrutiny under Title VI and 40 CFR Part 7.

II. Residents in the Impacted Area are harmed by BRESCO's operations.

Adversity and/or harm experienced as result of discriminatory activities covers a wide range of physical, economic, social, cultural, and psychological impacts.[135] In determining harm, agencies are entitled to employ a broad definition and consider all information (including anecdotal evidence) from complaining witnesses.[136] Here, Complainant asserts that the cumulative impacts of local pollution sources have, and will continue to contribute to physical, social and psychological impacts. BRESCO's continued operation, as effectively assured by the SWMP, compounds this harm.

Since its development, the BRESCO facility has been an infamous fixture in the Baltimore City skyline. Many residents who grew up in its shadow recall knowing it simply as a "cloud machine."[137] However, the banality of the City's addition of yet another facility in the Impacted Area steadily decreased as those living in the community became aware of the toxic

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[131] Attachment J - Clarification to Questions for Proposers during scoping documents for "Less Waste, Better Lives" Developing Baltimore City's Recycling and Solid Waste Master Plan for 2040 (Master Plan) and beyond (April 20, 2018) (emphasis added).
(emphasis added).
[132] Md. Code Ann., Environment § 9-503(a).
[133] *Id*. at §§ 9-505, 9-1703.
[134] SWMP, *supra* at 3.
[135] *Title VI Legal Manual,* DEP'T OF JUSTICE – CIVIL RIGHTS DIVISION, at 12, https://www.justice.gov/crt/book/file/1364106/dl?inline
[136] *Id.* at 13,
[137] *See e.g.,* Attachment D - Declaration of Tiffany Thompson; Attachment B - Declaration of Shashawnda Campbell ¶7.

emissions from the facility.[138] Over its almost forty years of operation the incinerator has become a well-recognized source of air pollution in Baltimore City. According to the Baltimore Sun, in 2014 the incinerator produced 82% of the sulfur dioxide and 64% of the nitrogen oxides emitted by smokestacks within City limits.[139] Similarly, in 2015 the incinerator emitted roughly double the amount of greenhouse gasses per megawatt hour of energy than each of the six (6) largest coal plants in Maryland.[140] Recent reports suggest that 36% of Baltimore's air pollution is attributable to BRESCO.[141] To this day, BRESCO continues to contribute a toxic mix of pollutants to the surrounding airshed.

a. Air Pollution

According to EPA 2020 National Emissions Inventory Data, BRESCO is the largest stationary source, in Baltimore City, of the greenhouse gases carbon dioxide and nitrous oxide; nitrogen oxide (NOx) and sulfur dioxide; lead compounds; mercury compounds; cadmium compounds; and hydrochloric acid.[142] BRESCO is the *second largest* source, in Baltimore City, of fine particulate matter (PM2.5), arsenic compounds, carbon monoxide, chromium compounds, formaldehyde, methane[143], and nickel compounds.[144] Exposure to any of these pollutants, alone or in combination, pose risks to human health.[145]

When the Baltimore City Board of Estimates approved a 10-year extension of the facility's contract for waste disposal in November of 2020, it highlighted NOx, SOx, dioxins, mercury, cadmium, and lead as pollutants subject to emissions controls.[146] Even low levels of nitrogen oxide exposure can cause irritation of eyes, nose, throat and lungs which may cause individuals to experience shortness of breath, tiredness and nausea.[147] Dioxins are highly toxic

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[138] *See e.g.,* Attachment D - Declaration of Tiffany Thompson, Attachment E - Declaration of Angela Smothers.

[139] Dance, *supra*.
[140] *Zero Waste and Moving Away from Toxic Trash Incinerators,* Chesapeake Climate Action Network, https://chesapeakeclimate.org/maryland/incinerators/.
[141] CCAN Action Fund, *How does pollution from BRESCO affect Baltimore?*, Fact Sheet: Clean Energy Jobs Act (Jan. 2019), https://ccanactionfund.org/media/BRESCO-fact-sheet.pdf.
[142] EPA, *Online 2020 NEI Data Retrieval Tool*, 2020 National Emissions Inventory (NEI) Data (April 9, 2024), https://www.epa.gov/air-emissions-inventories/2020-national-emissions-inventory-nei-data.
[143] Quarantine Road Landfill, where BRESCO trucks waste ash, was the largest stationary source of methane in Baltimore City in 2020.
[144] *Online 2020 NEI Data Retrieval Tool*, *supra*.
[145] *See e.g., Hazardous Air Pollutants,* ENVT'L PROTEC. AGENCY, https://www.epa.gov/haps https://www.baltimorecitycouncil.com/sites/default/files/files/11-04-2020%20BOE%20AGENDA.pdf
[146] *ToxFAQs for Nitrogen Oxides- How can nitrogen oxides affect my health?* Agency for Toxic Substances and Disease Registry, https://wwwn.cdc.gov/TSP/ToxFAQs/ToxFAQsDetails.aspx?faqid=396&toxid=69.
[146] *Learn about Dioxin,* U.S. Envt'l Protec. Agency, https://www.epa.gov/dioxin/learn-about-dioxin#:~:text=Dioxins%20are%20highly%20toxic%20and,the%20fatty%20tissue%20of%20animals%20.
[146] *Cadmium Compounds, Hazard Summary,* U.S. Envt'l Protec. Agency (2000), https://www.epa.gov/sites/default/files/2016-09/documents/cadmium-compounds.pdf.

[147] *ToxFAQs for Nitrogen Oxides*, Agency for Toxic Substances and Disease Registry (April 2002), https://wwwn.cdc.gov/TSP/ToxFAQs/ToxFAQsDetails.aspx?faqid=396&toxid=69.

and can cause cancer, reproductive and developmental problems, damage to the immune system, and can interfere with hormones.[148] Chronic inhalation and oral exposure of humans to cadmium can result in a buildup of the toxin in the kidneys, causing a range of kidney diseases and disorders.[149] Lastly, depending on the level of exposure, lead can adversely affect the nervous system, kidney function, immune system, reproductive and developmental systems and the cardiovascular system, as well as the oxygen carrying capacity of the blood.[150]

BRESCO's emissions of these pollutants, combined with the other numerous sources of air pollution, impacts air quality and human health in the Impacted Area.[151]

As described in the 2023 Community Coal Study:

> The open-air coal terminal is one of dozens of sources of air pollution regulated by MDE in the Curtis Bay area, including the Curtis Bay Energy medical waste incinerator, the BRESCO municipal solid waste incinerator, the Quarantine Road Landfill, the Patapsco Wastewater Treatment Plant, concrete crushing plants, asphalt manufacturing, chemical plants, and oil and gas terminals. Heavy diesel truck traffic is a significant mobile source of pollution in Curtis Bay with levels of black carbon along Pennington and Curtis Ave. similar to levels on major Baltimore highways.[152]

A related study cited "age-adjusted mortality rates in the [Curtis Bay] area due to heart disease, lung cancer, chronic lower respiratory disease, and cancer of all kinds exceed complimentary rates in the rest of Baltimore City."[153]

Nitrogen oxides emitted by BRESCO independently pose risks to human health and can also combine with volatile organic compounds in sunlight to form ground-level ozone, or "smog."[154] Baltimore is designated as an area in nonattainment with the 2015 federal ambient air quality standard for ozone, which is intended to protect public health and welfare.[155] Thus, the roughly

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[148] *Learn about Dioxin,* U.S. Envt'l Protec. Agency, https://www.epa.gov/dioxin/learn-about-dioxin#:~:text=Dioxins%20are%20highly%20toxic%20and,the%20fatty%20tissue%20of%20animals%20.
[149] *Cadmium Compounds, Hazard Summary,* U.S. Envt'l Protec. Agency (2000), https://www.epa.gov/sites/default/files/2016-09/documents/cadmium-compounds.pdf.
[150] *Basic Information about Lead Air Pollution, What are the effects of lead on human health?* U.S. Envt'l Protec. Agency, https://www.epa.gov/lead-air-pollution/basic-information-about-lead-air-pollution#:~:text=Depending%20on%20the%20level%20of,carrying%20capacity%20of%20the%20blood.
[151] *See supra*, section I (re: other industrial sources in the area).
[152] Collaborative Investigation of Coal Dust, Air Pollution, and Health Concerns in Curtis Bay, South Baltimore, Maryland, USA, 2022-2023 at 6.
[153] Aubourg, *et al.*, Community-driven research and capacity building to address environmental justice concerns with industrial air pollution in Curtis Bay, South Baltimore, *Frontiers of Epidemiology*, 12 September 2023, Vol. 3, at Table 1 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10720608/.
[154] *ToxFAQs for Nitrogen Oxides- How can nitrogen oxides affect my health?* Agency for Toxic Substances and Disease Registry, https://wwwn.cdc.gov/TSP/ToxFAQs/ToxFAQsDetails.aspx?faqid=396&toxid=69.
[155] U.S. EPA, Green Book, 8-Hour Ozone (2015) Nonattainment Area State/Area/County Report, https://www3.epa.gov/airquality/greenbook/jncs.html#MD.

880 tons of nitrogen oxides emitted by BRESCO in 2020 contributed to existing, negative air quality conditions for the City's residents.

Emissions of fine particulate matter, or PM2.5, contribute to serious and well-documented adverse human health effects associated with exposure to air pollution.[156] A 2018 air modeling report illustrated the incinerator's 2016 emissions impact on ambient levels of PM2.5 in the surrounding communities.[157] The CALPUFF air quality dispersion model (v.5.8.5) was used "to estimate the annual average PM concentration due to Wheelabrator's emissions in each county within the modeling domain," including Baltimore City.[158] The highest modeled annual average PM concentration in Maryland was in Baltimore City.[159] Building on the 2018 report and using the same inputs and assumptions, supplemental modeling estimated ambient PM2.5 concentrations, due to BRESCO's 2016 emissions data, at receptor locations in the Impacted Area.

Table 2: Modeled $PM_{2.5}$ Concentrations Due to BRESCO Incinerator Emissions

Location	Lat	Lon	Distance (km) to BRESCO stack	Modeled PM2.5 Concentration	
				5-Year Average (ug/m^3)	24-hr design value (ug/m^3)[160]
Brooklyn 1	-76.598268	39.233904	4.87	0.0103	0.044
Brooklyn 2	-76.607302	39.237294	4.14	0.0103	0.043
Cherry Hill 1	-76.629334	39.246239	2.63	0.0115	0.058
Cherry Hill 2	-76.623889	39.253214	1.94	0.0145	0.069
Cherry Hill 3	-76.617280	39.250564	2.43	0.0149	0.059
Cherry Hill Park	-76.617640	39.243913	3.09	0.0115	0.052
Curtis Bay 1	-76.588865	39.221201	6.49	0.0077	0.033
Curtis Bay 2	-76.589198	39.231527	5.56	0.0105	0.044
Curtis Bay 3	-76.587503	39.225971	6.13	0.0090	0.039
Curtis Bay 4	-76.593017	39.226254	5.83	0.0083	0.035
Lakeland 1	-76.644488	39.253073	2.23	0.0123	0.067
Lakeland 2	-76.653844	39.255117	2.61	0.0116	0.060
Lakeland 3	-76.644638	39.257542	1.84	0.0134	0.067
Mt. Winans 1	-76.646463	39.260575	1.73	0.0142	0.073
Mt. Winans 2	-76.643716	39.264496	1.30	0.0174	0.095
Westport 1	-76.637858	39.262743	1.02	0.0159	0.085

[156] *Health and Environmental Effects of Particulate Matter,* ENVT'L PROTEC. AGENCY, https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm
[157] *See* Attachment G, Dr. H. Andrew Gray, Estimating the Ambient PM Impacts from the Wheelabrator Facility (Mar. 2018).
[158] Att. G, Gray Report at 1.
[159] Att. G, Gray Report at 7.
[160] A design value refers to a "statistic that describes the air quality status of a given location relative to the level of the National Ambient Air Quality Standards." *Air Quality Design Values,* ENVT'L PROTEC. AGENCY, https://www.epa.gov/air-trends/air-quality-design-values.

Westport 2	-76.631941	39.264803	0.59	0.0132	0.080
Westport 3	-76.631351	39.267004	0.34	0.0058	0.043
Westport 4	-76.634978	39.259196	1.26	0.0147	0.072

This modeling confirms that BRESCO's emissions of fine particles affect air quality for residents in the Impacted Area. Notably, this modeling only captures the PM2.5 emissions[161] from the incinerator's stack and does not account for any additional PM2.5 contributed from truck traffic associated with BRESCO's operations.[162]

Air modeling data submitted in support of this Complaint (*see Table 2, supra*) evidences that at a minimum, PM2.5 pollution from BRESCO's operations is present throughout the Impacted Area. The known emission of other harmful pollutants from BRESCO and varying levels of exposure raises concerns for residents[163] and has proven frustrating for residents to manage. SBCLT and its members have frequently reported instances of excessive smoke from the incinerator.[164] A 2017 report reviewing health impacts from the incinerator found that, of jurisdictions in Maryland, the costs were highest for Baltimore City.[165] These costs are predominantly borne by the residents themselves, who are left with the bill for hospital visits, medications, respiratory health management devices (such as inhalers), among other necessities.[166] Currently, residents have described not only a significant population of asthma sufferers in their communities, but also a disconcerting rise in the number of individuals with cancer.[167] For those who have witnessed these impacts, while simultaneously petitioning the City to act, the final SWMP is extremely disappointing.

III. Pollution from BRESCO Disproportionately Impacts Residents in the Impacted Area

Due to the concentration of harmful facilities in the predominantly Black and Hispanic communities in the Impacted Area, residents are disproportionately harmed by BRESCO's continued operation, as compared to residents located equidistant from the incinerator. For purposes of EPA's consideration of this Complaint, a disparate impact is defined as: **"a**

[161] Particulate Matter refers to fine particles that are typically emitted in conjunction with industrial operations, while PM can refer to dust and silt it also encompasses the unique mixture of contaminants associated with the particular use emitting them. Generally, PM emitted in association with industrial activities contains a complex mix of fine particles including metals, elemental carbon, ammonium, sulfate, nitrate and related pollutants. *See* Dominici Francesca, et, al*., Chemical Composition of Particulate Matter and Life Expectancy,* 26(4) Epidemiology (July 2015) https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4742572/.

[162] *See, e.g.*, *Collaborative Investigations*, *supra* at 6; *see also* Aubourg et al., *supra* (" Heavy diesel truck traffic is a significant mobile source of pollution in Curtis Bay with levels of black carbon along Pennington and Curtis Ave. similar to levels on major Baltimore highways.").

[163] *See e.g.,* Att. D Declaration of Tiffany Thompson; Att. E- Declaration of Angela Smothers

[164] Att. D - Declaration of Tiffany Thompson¶ 11.

[165] Att. K, at 17.

[166] *See e.g*., Att. E Declaration of Angela Smothers; Attachment B- Declaration of Shashawnda Campbell.

[167] Att. E Declaration of Angela Smothers; Att. F - Declaration of Michael Middleton

measurement of a degree of difference between population groups for the purpose of making a finding under Title VI. Disparities may be measured in terms of the respective potential level of exposure, risk or other measure of adverse impact."[168] Further, a showing of disparate impact must be established through the use of "appropriate statistical measures."[169] Specifically, statistical data must demonstrate "a significantly adverse or disproportional impact on persons of a particular type produced by… facially neutral acts or practices." *Reg'l Econ. Cmty. Action Program v City of Middletown,* 294 F.3d 35, 52-53 (2002).

Here, data obtained from EJSCREEN shows significant exposure levels in the predominantly Black and Hispanic communities, that are not mirrored in the predominantly white communities equidistant from the BRESCO incinerator. This in addition to the air information discussed in this Complaint demonstrates that (i) communities in the Impacted Area are harmed by BRESCO's operation through exposure to the various pollutants emitted as part of its operation; (ii) that harm is compounded by the presence of multiple industrial operations in the vicinity; and (iii) despite being equidistant from the incinerator and its emissions, residents in the predominantly Black and Hispanic communities in the Impacted Area experience drastically different environmental circumstances than the predominantly white communities in the Comparison Area. Thus, residents in the Impacted Area are disparately impacted by BRESCO's operation, and the City's failure to adequately invest in practices that would reduce the rate of operation at the incinerator, and in turn reduce the amount of pollutants emitted, exacerbates that disparity.

The Impacted Area includes twenty-three (23) Census Blocks as identified on EJSCREEN. Of those twenty-three Census Blocks, twenty-two (22) have a population that is predominantly composed of people of color. Of those twenty-two, twelve (12) have a population that is predominantly Black, nine (9) have a population that is predominantly Black and Hispanic, and one (1) has a population that is predominantly Hispanic. *See Table 3* for demographic data from the 23 Census blocks in the Impacted Area.

[168] 65 F.R. 39665.
[169] *S. Camden Citizens in Action v. N.J. Dep't of Env't. Prot.*, 145 F. Supp, 2d 446, 491 (2001).

Table 3: EJSCREEN Data showing the demographics in each individual Census Block in the Impacted Area

EJSCREEN Block ID	% POC	% Black	% Hispanic
245102505002	100	100	0
245102505003	58	32	19
245102505004	49	21	1
245102505005	69	45	21
245102504023	53	26	21
245102504022	98	70	29
245102504024	71	33	32
245102504021	73	59	7
245102504011	60	29	27
245102504013	53	38	12
245102502051	100	100	0
245102502031	99	98	0
245102502041	94	89	0
245102502032	91	91	0
245102502072	98	97	0
245102502071	98	76	16
245102502042	98	92	6
245102503011	81	81	0
245102502052	84	57	25
245102502053	97	34	61
245102502055	63	57	4
245102502054	92	20	72
245102503012	99	89	8

By comparison, Maryland has a statewide population that is about 30% Black, 10.6% Hispanic, and 58% people of color using the same demographic dataset. [170]

Additionally, 21 Census Tracts in the area also register above the 80th percentile for EJ Index Values representing PM2.5 exposure, Ozone exposure, Deisel Particulate Matter, Air Toxics Cancer Risk, Air Toxics Respiratory Health Index. Toxic Releases to Air, and Superfund proximity, at the State level.[171] *See Table 4.*

[170] U.S. Census Bureau, American Community Survey ("ACS"), Maryland 2017-2021, https://data.census.gov/table/ACSDP5Y2021.DP05?g=040XX00US24&tid=ACSDP5Y2021.DP05. ACS 5-year demographic data for 2017-2021 is also used in EJScreen and % people of color in Maryland were calculated using the same methodology as in EJScreen. EPA, EJScreen, Environmental Justice Mapping and Screening Tool EJScreen Technical Documentation for Version 2.2 March 2024 at 4, https://www.epa.gov/system/files/documents/2023-06/ejscreen-tech-doc-version-2-2.pdf.

[171] EJ Indexes are calculated through a combined assessment of demographic data and the value assessed.

Table 4: EJSCREEN Data showing the State Percentile for identified EJ Indexes in each Census Block in the Impacted Area. EJ Indexes are calculated in combination with demographic data.

Block ID	PM 2.5 (Percentile)	Ozone (Percentile)	Diesel PM (Percentile)	Air Toxics Cancer Risk (Percentile)	Air Toxics Respiratory HI (Percentile)	Toxics releases to Air (Percentile)	Superfund Proximity (Percentile)
245102505002	98	99	99	99	99	99	99
245102505003	80	91	87	73	78	91	90
245102505004	72	84	77	58	68	83	76
245102505005	87	97	95	89	91	96	96
245102504023	71	77	64	51	65	77	70
245102504022	98	99	98	99	99	99	99
245102504024	92	97	90	91	93	97	97
245102504021	93	97	92	93	94	98	97
245102504011	93	96	91	90	91	97	96
245102504013	82	87	77	66	73	87	81
245102502051	98	99	99	98	98	99	97
245102502031	96	97	97	95	95	98	95
245102502041	99	99	99	99	99	99	99
245102502032	97	98	98	95	96	98	96
245102502072	98	98	98	97	97	99	96
245102502071	97	97	98	95	95	98	94
245102502042	99	99	98	99	99	99	98
245102503011	92	93	94	85	87	94	83
245102502052	93	95	96	91	92	97	88
245102502053	89	92	93	83	86	94	82
245102502055	89	92	93	83	86	94	81
245102502054	97	98	98	96	97	98	91
245102503012	99	99	99	99	99	99	95

These metrics are also comparable at the state level.

The veracity of this data is reflected in the lived experiences of residents in the Impacted Area. Tiffany Thompson, who was born and raised in the Cherry Hill community, and now resides in Curtis Bay, recalls her time working at the HeadStart Program in the area.[172] There, she was trained to use inhalers that are specifically designed for young children.[173] Based on Ms. Thompson's recollection, the youngest child in the program had not yet turned three.[174]

Frustratingly, the consequences of persistent exposure to the concentrated industrial pollution in the area extend beyond early childhood. While attending Benjamin Franklin High School (located in Blockgroup 245102505005 [175]), former students recall being surrounded by individuals with asthma,[176] who would often share inhalers when others forgot them.[177] When

[172] Att. E- Declaration of Tiffany Thompson ¶8
[173] *Id.*
[174] *Id.*
[175] Blockgroup ID number as identified on EJSCREEN.
[176] Att. B -Declaration of Shahsawnda Campbell ¶¶8-9
[177] *Id.*

opportunities arose to visit other schools within the City, students were surprised not to see the same signs of respiratory illnesses.[178]

Angela Smothers, who has lived in the Mt. Winans community for her entire life, has developed what has been diagnosed as severe allergies that have required increasingly higher doses as she has gotten older. Because of her symptoms Ms. Smothers worries for her long-term health, and attempts to choose indoor activities when she spends time with her grandchildren.[179] These concerns have been echoed for years by residents of the Impacted Area. Yet, when faced with the opportunity to meaningfully address disparate impacts, the City instead outlined a lackluster approach to diversion, and set the locality on track for continued reliance on BRESCO.

In altogether different circumstances is an area directly across the Patapsco River from the Impacted Area, and equidistant from the BRESCO incinerator. This area is comprised of the neighborhoods of Otterbein, Riverside, Federal Hill, South Baltimore, and Locust Point ("Comparison Area"). In comparison to the Impacted Area, only two of the sixteen census blocks in the Comparison Area are predominantly black (59% for both census blocks). *See Table 5.*

Table 5: EJSCREEN Data showing the demographics in each individual Census Block in the Comparison Area

Block ID	% POC	% Black	% Hispanic
245102401002	6	0	0
245102401001	15	3	4
245102402001	20	5	4
245102404001	12	6	3
245102302001	12	6	3
245102403002	17	2	0
245102404002	6	0	1
245102402002	6	0	1
245102403001	24	6	4
245102201004	17	4	8
245102404003	15	4	5
245102302002	19	3	6
245102403003	13	2	9
245102301001	59	53	1
245102301002	59	53	1
245102303002	17	7	4

Further, only two of the census blocks register above the 70th percentile for the same Environmental Justice Indexes identified in the Impacted Area, above. *See Table 6*

[178] *Id.*
[179] Att. E – Declaration of Angela Smothers ¶10

Table 4: EJSCREEN Data showing the State Percentile for identified EJ Indexes in each Census Block in the Comparison Area. EJ Indexes are calculated in combination with demographic data.

Block ID	PM 2.5 (Percentile)	Ozone (Percentile)	Diesel PM (Percentile)	Air Toxics Cancer Risk (Percentile)	Air Toxics Respiratory HI (Percentile)	Toxics releases to Air (Percentile)	Superfund Proximity (Percentile)
245102401002	42	40	40	24	51	40	38
245102401001	42	39	39	24	51	39	37
245102402001	56	51	54	25	54	50	46
245102404001	48	44	45	27	53	45	41
245102302001	48	44	45	27	53	45	41
245102403002	47	43	44	26	53	44	40
245102404002	20	18	22	0	30	17	16
245102402002	20	18	22	0	30	17	16
245102403001	59	54	55	34	56	56	51
245102201004	46	41	43	26	52	42	40
245102404003	43	40	41	24	51	41	38
245102302002	61	56	57	35	56	59	51
245102403003	36	32	35	21	47	33	31
245102301001	80	83	81	60	70	83	73
245102301002	80	83	81	60	70	83	73
245102303002	66	62	62	40	59	65	56

Demonstrably, though both residents in the Impacted Area and the Comparison Area are exposed to pollution from BRESCO's operation, residents in the Impacted Area are exposed to adverse effects of an industrialized area - pollution, explosions, chemical leaks, and fires - at significantly higher rate. While the existence of a disparate impact should not be simply inferred, a finding is supported where the practice actually or predictably results in discrimination. *See e.g Tsombanidis v. W. Haven Fire Dept't,* 352 F. 3d 565, 575 (2003). In the present case, emissions associated with the BRESCO incinerator contribute a toxic mix of pollutants to predominantly Black and Hispanic communities in the Impacted Area. The incinerator, which is located between and among residents in the Impacted Area *and* the Comparison Area contributes harmful air emissions to the significant cumulative pollution burden present in the Impacted Area. The Comparison Area bears no such comparable or equivalent burden.

Similarly, Table 4 above demonstrates high EJ Index percentiles at the state level for indicators like toxic releases, air pollution, and Superfund site proximity. These percentiles show that the Impacted Area is far more affected than the rest of Maryland, which has a substantially lower percent of residents who are Black, Hispanic, and people of color. Thus, the actual and predictable effect of failing to take actions to reduce pollution from BRESCO, is the exacerbation of harmful environmental impacts in the Impacted Area.

IV. The SWMP Fails to include mechanisms to reduce reliance on BRESCO which results in continued operation of BRESCO at its current rate.

In light of the Plan's prescriptive nature and the actions DPW and the City have taken, or failed to take, related to waste management investment and planning, it is likely that BRESCO will continue to operate at its current rate for the duration of the planning period and potentially beyond. In addition to the establishment of statistically significant disparity, disparate impact claims are further supported by the existence of a "causal connection between a facially neutral policy and a disproportionate and adverse impact on [a protected class]." *New York Env't. Justice Alliance v. Giuliana,* 214 F.3d 65, 69 (2000). In cases assessing the presence of a disparate impact, courts have noted that once a plaintiff makes a "prima facie showing, the burden shifts" and the perpetrator of the alleged impacts must prove "that its actions furthered in theory, and in practice and that no alternative would serve that interest with less discriminatory effect." *See Tsombanidis,* 352 F. 3d at 575 (quoting *Town of Huntington,* 844 F.2d at 936).

In the present case, the alternative with a less discriminatory effect – dedicated investment in waste diversion infrastructure – was supported and developed by the City, only to be effectively abandoned. The City's decision to adopt the SWMP, combined with the steps taken following its adoption in furtherance of the Plan, represents not only a departure from the City's previous approach to zero waste, but a failure to take actions that would prevent or reduce the disparate environmental impacts caused by BRESCO's continued operation at its current throughput. Importantly, Complainant's assertion that the Final SWMP does not contain provisions sufficient to reduce the rate of operation at the BRESCO incinerator is not only a conclusion that the content of the plan, and the City's action since that time supports; it is also a conclusion, that the City itself has reached.

a. Planning Efforts Preceding the SWMP

In the last four years, the City has been made aware of, or directly participated in the development of, three separate plans intended to address zero waste initiatives in Baltimore: The Zero Waste Plan (February 2020), The Less Waste Better Baltimore Plan ("Less Waste Plan" or "LWBB") (July 2020), and the 10-year Solid Waste Management Plan (largely completed in May 2023). These chronologically released plans track an incremental decline in the City's commitment to waste diversion practices. This lack of commitment culminated in the reduced commitment to waste diversion practices in the SWMP, support for the public subsidies directed to the BRESCO incinerator, and a failure to allocate funds sufficient to allow for the development of waste diversion facilities and associated practiced in the State's current capital budget.

Prior to the development of the Less Waste Plan, City leaders, including the Mayor, expressed an intent to reduce the City's reliance on BRESCO, and as a result, reduce the amount

of pollution from the incinerator's operations.[180] Community members attended multiple meetings with representatives from DPW, during which they were assured of the City's intention and desire to invest in zero-waste infrastructure and practices that would divert waste from incineration.[181] These early discussions were preceded by the development of the community driven Zero Waste Plan. The Zero Waste Plan[182] was developed as part of joint effort between "United Workers,... Zero Waste Associates; the President, Vice President, and other members of the Baltimore City Council; and by advocates from across the city especially from Southwest Baltimore Neighborhoods most negative affected by the pollution of incineration and those most active in demanding significant and timely detoxification of the [air and land]."[183]The plan was launched in February of 2020.[184] One month later, the Baltimore City Council adopted a resolution calling upon the Mayor and "and affected agencies to adopt a Zero Waste goal to divert **90%** of all materials discarded in the City from landfills, incinerators and the environment **by 2040**."[185]

Following the introduction of the Zero Waste Plan, the City and DPW completed the Less Waste Baltimore Plan development process, which resulted in the "Final Master Plan" issued in July 2020.[186] DPW described the LWBB plan as "outlining a clear and realistic future vision for improving the City's solid waste recycling program and operations, over both the near- and long-term, with the goal of maximizing waste reduction, reuse/repair, recycling and sustainable management of materials."[187] While the plan does not explicitly adopt the 90% zero waste goal identified in the Zero Waste Plan, it does identify the document and its goals under "Governing Plans and Legislative Efforts."[188] Instead, in its assessment of diversion potential, the LWBB established a slightly less ambitious goal, identifying a Maximum Diversion Potential ("MDP") of **83% diversion by 2040**.[189] The Less Waste Plan stated an expectation that the City would meet 50% of the MDP in 10 years, and 90% in 15 years (2030 and 2035 respectively). It also noted that achieving the MDP sooner was within the City's grasp: "The City could aim to

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[180] Fern Shen, *Backtracking on Campaign promise, Scott now favors extending BRESCO contract,* BaltimoreBrew (Oct. 13, 2020) https://www.baltimorebrew.com/2020/10/13/reneging-on-campaign-promise-scott-now-favors-extending-bresco-contract/.l

[181] Att. A – Declaration of Greg Sawtell ¶¶12-15.

[182] Liss, *supra.*

[183] City of Baltimore Council Bil 20-020R (Resolution), A council resolution concerning Baltimore's Fair Development Plan for Zero Wast: 2020-2040 and Beyond. Page 1, Lines 7-12.

[184] *The Strategic Plan,* Sout Baltimore Community Land Trust, https://www.sbclt.org/the-strategic-plan/

[185] City of Baltimore Council Bil 20-020R (Resolution), A council resolution concerning Baltimore's Fair Development Plan for Zero Wast: 2020-2040 and Beyond, *available at* https://baltimore.legistar.com/LegislationDetail.aspx?ID=4390594&GUID=1386D7E3-E047-4518-A74F-AF63FEFD7FEC&Options=ID%7CText%7C&Search=.

[186] *City of Baltimore Recycling and Solid Waste Master Plan,* Baltimore City Department of Public Works, (Jul. 28, 2020) available at: https://publicworks.baltimorecity.gov/sites/default/files/LWBB_Final%20Master%20Plan_7-28-20.pdf

[187] *About the Less Waste, Better Baltimore Plan,* BALTIMORE CITY DEPARTMENT OF PUBLIC WORKS, https://publicworks.baltimorecity.gov/less-waste-better-baltimore#:~:text=We%20are%20committed%20to%20developing,reuse%2Frepair%2C%20recycling%2C%20and

[188] *Recycling and Solid Waste Master Plan* at 12.

[189] Less Waste Plan at 22.

decrease any performance timeframe by phasing in options faster than assumed herein and/or by increasing funding to education, outreach, and other efforts to stimulate participation."[190]

b. Diversion efforts detailed in the final SWMP.

After scaling back from a 90 to 83% diversion goal by 2040, the City then took an even greater step back with the SWMP. The SWMP abandons the LWBB plans 50% goal and instead relates the majority of its diversion efforts to the 35% recycling rate required by the Maryland Recycling Act ("MRA"). The reduction is also a delay, as the end date in the LWWB plan is 2030 and the SWMP contemplates achieving its 35% rate by 2033. In concluding its discussion of the City's waste disposal system in Section 5, the SWMP states that "[u]ntil there is universal, coordinated adoption of waste diversion practices across public and private sectors, it is likely that [BRESCO] will continue to operate at or near its current throughput." This assertion attempts to divert responsibility for reducing operations at BRESCO at the feet of the waste disposal system as a whole and fails to recognize the very real implications of the City's own contributions.

The portion of overall waste managed by the City amounts to approximately 414,000 tons.[191] Of these 414,000 tons approximately 136,000 tons (33%) is delivered directly to BRESCO. However, the City also sends 55,000 tons to the Northwest Transfer Station ("NWTS"). The City's 55,000 tons contributes to the 81,000 tons that the NWTS receives as a whole. Of that 81,000 tons, 55,000 tons are in turn sent to BRESCO. Additionally, of the original 414,000 tons managed by the City, 8,000 tons are successfully recycled or composted. Based on its current waste stream flow, the City effectively diverts less than 2% of its waste. Notably, approximately 94% of the waste generated by BRESCO is delivered to QRL (approximately 8,000 tons out of 138,000 tons are recycled). On its face, this minimal diversion effort raises concerns about the City's intent to reach MDP as outlined in the LWBB plan.

This concern proves to be warranted upon further review of the SWMP components preceding the ultimate conclusion about BRESCO' s future operational rate. The LWBB plan espouses the implementation of a decentralized approach to waste diversion relying on multiple facilities to increase diversion potential and decrease the likelihood of detrimentally impacting performance in the event of a disaster. In this way, the LWBB plan, like the Zero Waste Plan recognizes that receiving infrastructure is a crucial component of achieving diversion. Recognition of this fact does appear to permeate the final SWMP.

First, DPW acknowledges two key decision points for BRESCO during or immediately after the 10-year Plan period—its contract expiration in 2031 and its permit expiration in 2027[192]—but then fails to establish measurable goals that would enable any progress toward transitioning away from incineration to inform or influence those future decisions. Specifically,

[190] *Id.*
[191] SWMP, *supra* at 39.
[192] *Id.* at 77-78.

the SWMP abandons the LWBB plan's 50% goal and instead relates the majority of its diversion efforts to the 35% recycling rate required by the Maryland Recycling Act ("MRA").

While this alone may not have been immediate cause for concern, the SWMP goes on to describe "Barriers to achieving Long-Term Solid Waste Management Goals."[193] In this section, the Plan identifies four barriers, only one of which is related to the development of diversion infrastructure ("lack of organics collection and processing opportunities").[194] Instead the Plan identifies the chief barriers as "residential habits" and a "lack of legislation" enforcing and requiring diversion practices. The plan goes on to suggest that the barriers to single stream recyclables diversion include collection schedules, a lack of incentive, lack of education and communication around recycling, social and cultural barriers, and lack of school recycling, among other things.[195] Overall more than half of the identified barriers to recycling relate to individual behavior. This approach is echoed in the "opportunities for improvement section" that follows, in which ten of the identified twelve actions relate to incentivizing or creating opportunities for individuals to engage in behaviors that promote recycling. While Complainant takes no issue with behavioral change action items in general, their positioning as both the barriers and biggest source of opportunity is troubling in the absence of a more transparent discussion related to diversion infrastructure.

The City's decision to back away from infrastructure investment is also apparent in its discussion of opportunities to improve organics processing capacity. While Section 5 of the SWMP notes the LWBB plan's central recommendation of developing in-city organics processing capacity, it ultimately states that "*if* the City chooses to construct (or facilitate construction) of an organics processing facility" it can choose from one of two options.[196] In later discussion dedicated to the best approach for proposed composting facilities, the SWMP states that the City will take a "decentralized phased in approach to developing organics processing capacity in which… facilities would be constructed on an as-needed basis."[197] The Plan then goes on to explain that if the funding process was started in 2024, a resulting facility would not be operational until 2028.[198] Assuming the implementation of a phased approach, and the four year development timeframe that the City suggests, residents in the Impacted Area would be subject to BRESCO's pollution for an undetermined amount of time that will likely exceed the planning period associated with the SWMP.

The result of the City's approach in Section 5, and in the Plan itself, is the perpetuation of a system that supports the continued operation of BRESCO at or near its current rate, and fails to adequately plan for recycling, composting, and disincentives that would translate to tangible reductions in the facility's rate of operation. Accordingly, because the SWMP generally outlines

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[193] *Id.* at 89.
[194] *Id.*
[195] *Id.* at *88.*
[196] *Id.* at 126. (emphasis added)
[197] *Id. at 187.*
[198] *Id.* at 188.

Baltimore City's waste management plan, but specifically harms communities in the Impacted Area by cementing BRESCO's operations and failing to plan for a reduction in operation, its implementation has, and will result in disparate impacts.

c. Baltimore City implementation of the SWMP since its adoption

As noted above, EPA has continuing authority to review the Recipient's actions because the plan will be implemented over a 10-year period (2024-2033). As of this filing, the City has begun to take actions indicative of its intent to implement a Plan devoid of reliable diversion tactics by (1) advocating for measures that prioritize BRESCO's financial stability; and (2) failing to seek funding sufficient to even begin the slow, phased process of developing diversion infrastructure.

The initial action discussed above, came in the form of a letter of intent from Mayor Scott's office, purportedly intending to provide context for the members of the Maryland legislature considering a new proposal to reclassify waste to energy incinerators in the RPS. The legislation was introduced in Maryland's 2024 session, in the month immediately following the City's finalization and adoption of the SWMP. Senate Bill 146 (*Renewable Energy Portfolio Standard – Eligible Sources – alterations* (Reclaim Renewable Energy Act of 20204)) would have stopped waste-to-energy incinerators for profiting from a scheme intended to allow the proliferation of sustainable, and environmentally conscious energy operations.[199] BRESCO in particular was able to earn $10 million in profits over a 6-year period as a result of its favorable categorization.[200] Though Mayor Scott, through his office, has previously issued letters of support,[201] the letter submitted in the 2024 session instead listed its position as "Letter of Information." In that Letter, it is noted that if the facility were to close, the City's "finances as they relate to waste management would be likely be significantly affected." The letter goes on to note that the city was facing an estimated $100 million deficit for Fiscal Year 2025.[202]

The City's letter was submitted knowing not only the impetus for the community's Zero Waste plan, but also knowing the health concerns plaguing the community, and with full awareness of the environmental justice concerns related to waste to energy incinerators. While Complainant does not seek to challenge the underlying assertion of financial considerations related to BRESCO's operation, such considerations are not sufficient justification for exacerbating disparate impacts. *Compare with Bryan v. Koch,* 627 F.2d 612, 617(2d. Cir. 1980) (evaluating the impacts caused by closing a hospital, and noting that "…saving money, while obviously a legitimate objective of any governmental plan to close a public facility, cannot be sufficient justification in a case like this there where public officials have made a choice to close one of 17 municipal hospitals. In such circumstances it is the choice of this particular hospital that must be justified.") As one of the first official actions taken following the adoption of the

[199] *See Section II(a) on Maryland RPS infra.*
[200] *Id.*
[201] *See e.g.,* Scott 2023 Letter, *Supra.*
[202] *See* Scott 2024 Letter, *Supra.*

SWMP, the Mayor's letter evidences an intent to not only continue relying on BRESCO but also to advocate for its continued existence.

i. Baltimore City FY25 Budget

This approach was carried through to the City's proposed budget for Fiscal Year 2025 ("FY25") and the associated six-year capital spending plan. In an associated release, Mayor Scott noted that the preliminary budget "reflects [the City's] priorities."[203] In the current draft of the City's budget, there is no capital spending allocated in FY25 for zero waste infrastructure.[204] What is more, per the proposed budget DPW has only requested $2 million in funding starting in 2026 to implement the phased approach to compost facility development contemplated in the SWMP.[205] Following the associated timeline, a facility that received funding in 2026 would not be operative until 2030, just three years before the end of the planning period. This timeline also assumes adequate and consistent funding, which is currently absent from the Capital budget. Though funding amounts for FY24 were adjusted to reflect EPA's $4 million grant for the construction of a compositing facility, DPW is not requesting any funding for the construction of additional facilities through the FY25-FY30 planning period.[206]

As previously discussed, the LWBB plan and the SWMP identify the need for *multiple* facilities to operate as part of a decentralized network in order for effective diversion to be achieved. At its earliest opportunity, DPW and the City have instead identified plans for *one* facility. This action, combined with the previous support for BRESCO in the RPS process, contradicts the City's assertion that the dynamics of the waste disposal system as a whole prevent reduced reliance on BRESCO. Rather, these actions would suggest that the City's own dynamics, and its own appetite for investment in diversion, is what maintains BRESCO's current rate of operation.

Additionally, it is the City that continuously ensures that BRESCO has no competition. Additional composting facilities would not only be capable of receiving the waste managed by the City but also from the additional waste stream comprised of all of the waste not managed by the City, which is currently sent to BRESCO.

Increased investment by the City in zero waste infrastructure would provide adequate facilities to support increased diversion of waste from local entities. There is a desire and commitment to do so, as evidenced by Johns Hopkins University's ("JHU") willingness and intent to divert nearly all of its medical waste from incineration by BRESCO[207]. JHU posted an

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[203] *Mayor Scott Releases FY2025 Preliminary Budget,* City of Baltimore, https://mayor.baltimorecity.gov/news/press-releases/2024-04-01-mayor-scott-releases-fy2025-preliminary-budget
[204] Att. M - CWA Comments, at 1.
[205] *Id.* at 2
[206] *Id.* at 3
[207] Christine Condon, *Johns Hopkins plans to divert medical waste from South Baltimore incinerator amid pollution concerns,* The Baltimore Sun (Mar. 20, 2024) https://www.baltimoresun.com/2024/03/20/hopkins-medical-waste-curtis-bay-incinerator/

official commitment to their website stating that diversion of waste from incinerators and landfills "is not only important from an environmental perspective, but due to the local health impacts of waste disposal, is a key action JHU must take to address environmental justice and reduce disproportionate harm to low-income, communities of color."[208] JHU is also committed to food waste reduction with a focus on reducing waste and increasing composting across the university.[209] Furthermore, years ago in 2012, JHU participated in an EPA funded pilot composting initiative with Waste Neutral (a local food waste hauler), DPW, and Baltimore City Schools that had notable success with over 34, 525 pounds of food waste diverted from landfills and incinerators and recycled into compost.[210] These collaborative efforts demonstrate a serious commitment from local entities to reduce waste and utilize options other than incineration or landfill disposal.

Through its blatant support for the incinerator, the City ensures that all entities evaluating their waste disposal options are left with the same binary choice, QRL or BRESCO.

CONCLUSION

Years of research, community advocacy, and federal investment have made clear that composting facilities are realistic, desired, and capable of significant change. Like QRL these facilities are also capable of contributing to the City's revenue generation through the imposition of a tip fee. Yet, when faced with the choice of incinerating or diverting, the City has proven that it would much rather burn its waste, no matter the consequences.

REQUEST FOR RELIEF

In light of the information provided above, and the continued harm likely to be felt by the Recipients implementation of the SWMP, Complainant asks that EPA:

a. Accept this complaint for further investigation consistent with Title VI 42 U.S.C. §2000d *et. seq.*, 40 CFR Part 7, and the agency's plenary authority under those regulations.
b. Require the City of Baltimore to provide a transparent accounting of its use of funds to develop the Bowley's lane facility, and any other composting facilities.
c. Investigate the health impacts associated with the operation of the BRESCO based on current operating conditions.
d. Require the City of Baltimore at Quarantine Road Landfill to increase its current tipping fee at Quarantine Landfill to account for inflation and consistency with regional practices. Tip fee revenue should be considered for reinvestment in:
    a. Community health initiatives

[208] https://sustainability.jhu.edu/our-commitments/responsible-consumption/
[209] *Id.*
[210] Att, O – Composting Pilot Study

    b. The development of conservation easement/restricted use areas designed to prevent further industrial development.
    c. Reinvestment in measures that could reduce instances of illegal dumping in the Impacted Area
e. Require the City of Baltimore to establish and comply with a timeline for the development of diversion practices and associated infrastructure. Any timeline should be accompanied by:
    a. Transparent accounting of costs associated with the development of composting and recycling facilities.
f. Any other remedies that EPA determines to be necessary to address and prevent the perpetuation of disparate impacts in the Impacted Area caused by the Recipients failure to adequately implement practices capable of reducing the rate of pollution at the BRESCO incinerator.

In support of EPA's investigation, Complainant is willing to participate in discussions, meetings, or other conversations, as needed to resolve or address the issues raised in this Complaint.

Respectfully submitted,

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