

Sent by US First Class Mail and Email

November 18, 2024

Noor Nahar  
Air Quality Engineer  
Department of Environmental Protection  
Southwest Regional Office 400 Waterfront Dr.  
Pittsburgh, PA 15222

Re: Westmoreland Sanitary Landfill Air Quality Title V Operating Permit Renewal  
TVOP-65-00767

Dear Ms. Nahar,

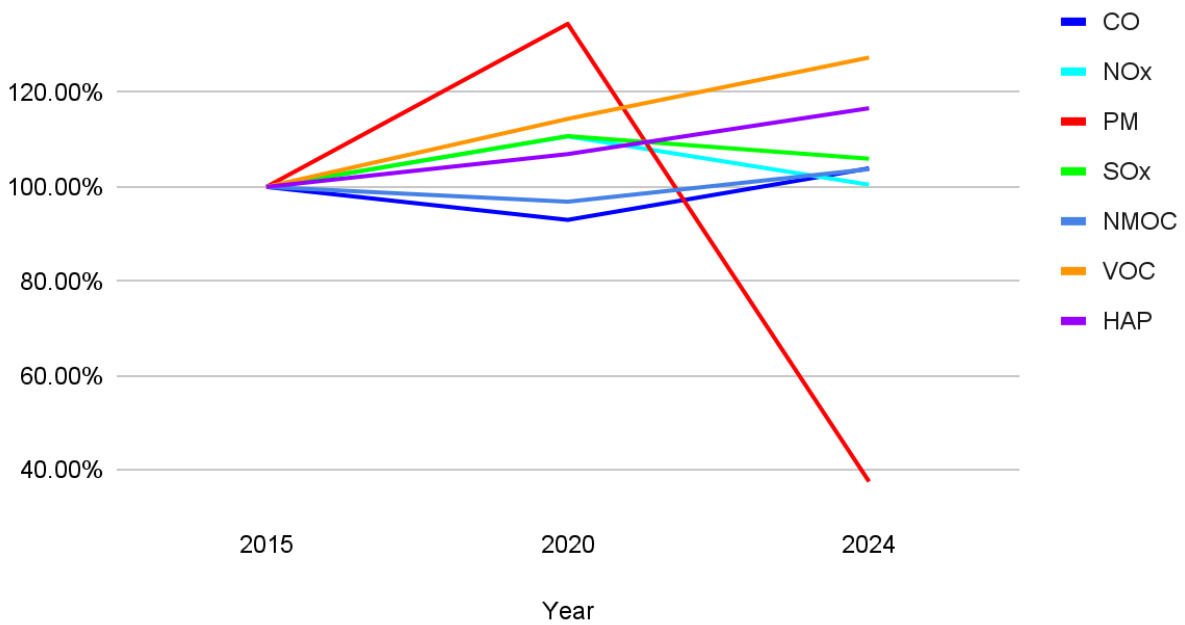
We are writing on behalf of the members of our organization, Protect Penn-Trafford (Protect PT). Protect PT is a nonprofit citizens group dedicated to ensuring that the safety, security, and quality of life of community members are protected from the effects of unconventional natural gas development and the resulting pollution that fills local waste facilities and landfills in Westmoreland and Allegheny Counties. Protect PT insists on the necessity of a public hearing on this renewal to receive public comments, given that the notice of the permit published in the Mon Valley Independent only shared options for commenting via physical mail. Although an email comment option was later provided to Protect PT on November 18, information on how to submit comments by email has not been disseminated to the general public. This is a significant burden to members of the public who are not able to easily engage with the physical mail system. Please consider this comment regarding the Westmoreland Sanitary Landfill (WSL) Air Quality Title V Operating Permit Renewal.

## Recommendations

### The WSL Title V Permit Should Not be Renewed Because it Permits Increased Pollution in Socioeconomically Disadvantaged Areas While Attempting to Avoid Local Responsibility

The Department of Environmental Protection (DEP) should deny the Air Quality Title V Operating Permit Renewal for the WSL. The WSL has expanded significantly over the past thirty years, creating the potential for increasing volumes of air pollution and greenhouse gas emissions. The graph below summarizes the Title V Potential Emissions for the WSL from 2015, 2020, and from the current 2024 application.

### Change in Potential Air Emissions From WSL



A graph of the percent change in emissions of Carbon Monoxide, Nitrogen Oxides, Particulate Matter, Sulphur Oxides, Non-Methane Organic Compounds, Volatile Organic Compounds, and Hazardous Air Pollutants from the WSL since 2015, based on the potential to emit summary from the Title V air permit applications and issuances for 2015 and 2020, as well as the notice of intent to issue published in 2024.<sup>1</sup>

<sup>1</sup> Response to the Administrative Incompleteness Determination letter dated June 17, 2020 for the Title V Permit Renewal Application (TV-PA-65-00767) for Westmoreland Sanitary LF, LLC - Sanitary LF at 28, [https://files.dep.state.pa.us/RegionalResources/SWRO/SWROPortalFiles/Community%20Info/Westmoreland\\_Sanitary\\_Landfill/TV-65-00767\\_Westmoreland\\_Sanitary\\_Landfill\\_Renewal\\_app\\_rec%27d\\_2020.06.17.pdf](https://files.dep.state.pa.us/RegionalResources/SWRO/SWROPortalFiles/Community%20Info/Westmoreland_Sanitary_Landfill/TV-65-00767_Westmoreland_Sanitary_Landfill_Renewal_app_rec%27d_2020.06.17.pdf) (last visited Nov. 11, 2024); Commonwealth of Pennsylvania Department of Environmental Protection, *NOTICE OF INTENT*

This data indicates that, with the exception of particulate matter, potential emissions of all tracked categories of air pollutants have increased by between 0.5% and 27.4% since 2015. These increases risk the health and safety of local residents due especially to elevated exposures to volatile organic compounds (VOCs)<sup>2</sup>, hazardous air pollutants (HAPs)<sup>3</sup>, and sulfur oxides (SOx), primarily sulfur dioxide.<sup>4</sup> On top of these accelerating harms indicated in prior and current permit applications themselves, evidence gathered on September 3, 2024, by local residents in collaboration with Physicians for Social Responsibility, indicates that unknown amounts of fugitive methane emissions are presently and continuously escaping from a large area of the WSL, shown in purple on a video taken by a Forward Looking Infrared (FLIR) camera on September 3, 2024.<sup>5</sup> These apparently untracked emissions cast doubt on the accuracy of figures reported by the DEP for the actual emissions from the WSL. Under these circumstances, where projected emissions and actual emissions tracking does not properly account for the significant amount of fugitive emissions documented by citizens living around the landfill property, the DEP should require holistic and accurate air emission monitoring data of actual air emissions from the WSL before renewing the Title V air quality permit.

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*TO ISSUE Air Quality Title V Operating Permit Renewal Westmoreland Sanitary Landfill, LLC TVOP-65-00767, MON VALLEY INDEPENDENT, Oct. 23, 2024, at B10.*

<sup>2</sup> Long term exposure to VOCs is known to cause eye, nose, and throat irritation, difficulty breathing, nausea, neurological damage, multi-organ damage, and cancer. VOCs also react with the atmosphere to form low-altitude ozone, a separate air pollutant and contributor to climate change. Volatile Organic Compounds, American Lung Association, <https://www.lung.org/clean-air/indoor-air/indoor-air-pollutants/volatile-organic-compounds> (last visited Nov. 11, 2024).

<sup>3</sup> Long term exposure to HAPs is known to cause cancer, immunological damage, neurological damage, infertility, developmental harms in children, and respiratory damage. Health and Environmental Effects of Hazardous Air Pollutants, Environmental Protection Agency, <https://www.epa.gov/haps/health-and-environmental-effects-hazardous-air-pollutants> (last visited Nov. 11, 2024).

<sup>4</sup> Exposure to sulfur dioxide is known to cause respiratory damage, particularly in children and people suffering from asthma. Sulfur dioxide can also form other sulfur oxides and particulate matter in the atmosphere, and contribute to acid rain which harms sensitive ecosystems. Sulfur Dioxide Basics, Environmental Protection Agency, <https://www.epa.gov/so2-pollution/sulfur-dioxide-basics> (last visited Nov. 11, 2024).

<sup>5</sup> Westmoreland Sanitary Landfill, Physicians for Social Responsibility Pennsylvania, Nov. 9, 2024, <https://www.youtube.com/watch?v=4MGpM2cmVTU> (last visited Nov. 11, 2024),

The harms from these localized pollutants are even more egregious in light of the location of the WSL. While the WSL is located within Rostraver Township, the municipal regulation of the landfill by Rostraver's Board of Commissioners significantly impacts the residents of the nearby city of Monessen and the borough of Charleroi. This is because the landfill is approximately three miles away from the densely populated areas of Rostraver in Fellsburg and Sweeney Plan, but is approximately one-thousand feet away from residences in Monessen and under two miles away from residences in Charleroi. It is unsurprising then that Monessen and Charleroi both suffer from ozone exposure above the national median, while the densely populated portions of Rostraver do not.<sup>6</sup> Monessen and especially Charleroi further suffer reduced life expectancies compared to Rostraver, higher rates of heart disease, and higher rates of asthma even outside those areas immediately impacted by the nearby Monessen Coke Plant.<sup>7</sup> These exposures and harms compound the economic burdens of lower incomes and higher unemployment imposed on Monessen and Charleroi, which Rostraver does not share.<sup>8</sup>

Together, this data paints a picture of a landfill that is polluting economically disadvantaged communities at an increasing pace, while remaining unaccountable to local municipalities by operating in a neighboring, more prosperous municipality far from that municipality's population. This activity flies in the face of the principles of environmental justice, and it is contrary to the environmental justice mission of the DEP to permit such an exacerbation of environmental inequality to continue. This is especially the case when according to the DEP's own environmental justice policies, the portions of Monessen nearby to the WSL,

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<sup>6</sup> This data is gathered by navigating to <https://ejscreen.epa.gov/mapper/> and searching under "Environmental Burden Indicators" for "Ozone" while selecting "Compare to US."

<sup>7</sup> This data is gathered by navigating to <https://ejscreen.epa.gov/mapper/> and searching under "Health Disparities" for "Low Life Expectancy," "Heart Disease," and "Asthma." The areas immediately near the Monessen Coke Plant are seen in red when searching for "Asthma."

<sup>8</sup> This data is gathered by navigating to <https://ejscreen.epa.gov/mapper/> and searching under "Socioeconomic Indicators" for "Low Income" and "Unemployment Rate."

as well as all of Charleroi, are in a 2024 environmental justice area.<sup>9</sup> Since the WSL and surrounding areas are in an environmental justice area, the permit renewal process triggers an environmental justice review by the DEP, including consideration of the enhanced public participation process.<sup>10</sup> The only way for the citizens of Monessen and Charleroi to protect their health and safety from the accelerating pollution of the WSL is to appeal to the DEP to recognize the harms of this pollution and deny the WSL's renewal application. Protect PT submits this comment on their behalf and asks the DEP to deny the renewal application.

The WSL Title V Permit Should Not be Renewed Because the WSL Continues to create a Nuisance by Permitting Uncontrolled Fires and Dispersing Noxious Odors, Dust, Mud, and Dirt Outside the Boundaries of the Landfill

The WSL continues to create a nuisance by dispersing noxious landfill odors, spreading dust across neighboring properties, tracking mud and dirt onto roads outside the boundaries of the landfill, and permitting uncontrolled dumpster fires on the property. These nuisances indicate that the landfill poses a danger to the air quality of the surrounding area by permitting fugitive emissions of particulates, fugitive emissions from the unplanned burning of garbage, and fugitive emissions from improperly covered waste products which then spread noxious odors on surrounding properties.

Based on Protect PT's observations of a phone camera video taken by a local resident, on the afternoon of November 10, 2024, the same local resident attending an event at Falcon Gymnastics & Fieldhouse observed a billowing fire in a dumpster which was in a parking lot on the property of the WSL. The resident observed that this fire burned for at least two hours, and was not extinguished until after this resident called 911 to notify emergency services of the fire. Protect PT is willing to share the recording of this fire upon a request from the DEP. Although it

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<sup>9</sup> This data is obtained by navigating to <https://gis.dep.pa.gov/PennEnviroScreen/> and then toggling the view for "Environmental Justice Areas," then "2024," then "EJ Areas 2024."

<sup>10</sup> Environmental Justice Policy, Department of Environmental Protection, No. 015-0501-002, Sept. 16, 2023, at 6.

is unclear what material was burning in the dumpster, this uncontrolled fire necessarily spread fugitive emissions of air pollutants consisting of whatever material happened to be in the dumpster at the time it caught fire. Given that the WSL accepts oil and gas drilling waste, which includes radioactive materials, it is even possible that this fire dispersed radioactive materials into the surrounding environment, clearly creating a nuisance and an immediate public health hazard.<sup>11</sup> Even if no radioactive materials were present, it is still not realistic to believe that officials at the WSL tracked the resulting emissions from this fire, which means that these emissions will be unaccounted for by estimates of yearly air pollutant emissions. The DEP should not renew a Title V permit for the WSL when it is releasing uncontrolled and unaccounted-for air pollutants into the surrounding environment as recently as this same month.

As recently as 2023, DEP inspectors observed a “strong, constant landfill odor” on multiple occasions at locations outside of the property of the WSL.<sup>12</sup> These odors are typically an indication of the presence of “landfill gas,” which is composed of methane, carbon dioxide, and smaller amounts of various NMOCs, VOCs, and HAPs.<sup>13</sup> “Recently studies have shown that a prolonged exposure to odors can generate unpleasant reactions ranging from emotional stresses such as states of anxiety and unease to physical symptoms (Aatamila et al., 2011), including headaches, eye irritation, respiratory problems, nausea or vomiting (National Research Council Committee on Odours, 1979). All these reactions interfere with daily activities with a great

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<sup>11</sup> ‘Landfill Tea’ Steeps Fracking Waste Near Suburban Communities, West Virginia Water Research Institute, Mar. 14, 2024,

<https://wvri.wvu.edu/news/2024/03/14/-landfill-tea-steeps-fracking-waste-near-suburban-communities#:~:text=Westmoreland%20Sanitary%20is%20one%20of,as%20%E2%80%9Cproduced%E2%80%9D%20water>) (last visited Nov. 12, 2024).

<sup>12</sup> Consent Order and Agreement, Commonwealth of Pennsylvania Department of Environmental Protection, Nov. 1, 2023,

[https://files.dep.state.pa.us/RegionalResources/SWRO/SWROPortalFiles/Community%20Info/Westmoreland\\_Sanitary\\_Landfill/WSL\\_Consent\\_Order\\_and\\_Agreement\\_11.1.2023\\_executed.pdf](https://files.dep.state.pa.us/RegionalResources/SWRO/SWROPortalFiles/Community%20Info/Westmoreland_Sanitary_Landfill/WSL_Consent_Order_and_Agreement_11.1.2023_executed.pdf), at 11, 13 (last visited Nov. 12, 2024).

<sup>13</sup> Marinella Palmiotto et al., Influence of a Municipal Solid Waste Landfill in the Surrounding Environment: Toxicological Risk and Odor Nuisance Effects, 68 *Env’t Int’l* 16 (2014),

<https://www.sciencedirect.com/science/article/abs/pii/S0160412014000749>.

impact on [sic] life quality (Heaney et al., 2011). In addition, unpleasant odor is more and more often regarded as an environmental concern that can cause impairment of the quality of the natural environment for any use, altering the ecosystem structure and function. The growing concern for human and environmental well-being has promoted the necessity for odor impact assessment and consequent odor emission regulation (Nicell, 2009).<sup>14</sup> These strong odors indicate that the WSL is still failing to properly cover waste at the landfill and allows reactive chemicals to escape into the air, as corroborated by the aforementioned consent order.<sup>15</sup> There is no evidence that these strong landfill odors off of the WSL's property have abated despite the statement by the DEP that "WSLF has since corrected, or is in the process of correcting the violations, and is working with the Compliance and Enforcement group to resolve the NOV."<sup>16</sup> The DEP should not renew a Title V permit for the WSL so long as this strong landfill odor remains unabated in areas outside of the WSL's property, since this odor constitutes a nuisance to nearby residents who, in some instances, are less than one-eighth of a mile from the WSL.

Dust from the WSL falls across neighboring properties, spreading particulate matter into the air and contaminating the property of residents and businesses in a way that creates a nuisance. This violates 25 Pa. Code § 123.2, relating to visible particulate matter spread beyond the property. Protect PT has interviewed multiple local residents who have reported that construction activity on a cell of the landfill currently under construction has caused the WSL to introduce heavy construction vehicles and machinery onto the property. The ground disturbance created by this equipment has created significant quantities of dust that have blown and settled on residential and commercial properties beyond Tyrol Blvd. This further air pollution only

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<sup>14</sup> *Id.*

<sup>15</sup> *See supra*, note 12, at 12.

<sup>16</sup> Letter from Noor Nahar to AQ Case File TVOP-65-00767, 16 October 2024, Review Memo of Title V Application Westmoreland Sanitary Landfill, LLC. Sanitary Landfill Rostraver Township Westmoreland County, Commonwealth of Pennsylvania Department of Environmental Protection Southwest Regional Office, at 3.

complements the noise burden created by the construction activity and has led to complaints by local residents of asthma and respiratory difficulties. While the landfill is currently expanding even further and this expansion is causing dust to blow off of the property, the DEP's own statements indicate that the dust spilling off of the property from the expansion of the landfill may also be a result of the fact that the landfill has already met and is exceeding its permitted design capacity for waste mass.<sup>17</sup> Residents with pre-existing asthma are especially vulnerable to this cumulative dust exposure. As discussed, Monessen contains a disproportionately high number of people with asthma compared to the general population. The DEP should not renew the Title V air permit for the WSL so long as the WSL creates a nuisance and trespasses by spreading its dust onto the properties and into the lungs of local residents who already do their part to avoid exposure to the WSL's pollution by staying off of the property.

Finally, the trucks traveling to and from the WSL continue to impermissibly track landfill mud and dirt onto Tyrol Blvd, adjacent to the landfill property. Local residents have complained to Protect PT of this activity and these complaints are corroborated by the November 2023 consent order. Specifically, the DEP has previously observed wet mud and dirt covering the entrance road to the WSL which was tracked on to Tyrol Blvd in both the northbound and southbound lanes, on multiple separate occasions.<sup>18</sup> According to local residents, these conditions have not abated. When spread across surface areas outside the property, this mud evaporates and offgasses contaminants more quickly into the surrounding area off of the property, while also polluting a public roadway. This unlawful activity poses a danger to the air quality in the area surrounding Tyrol Blvd for which the actual air emissions figures reported by

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<sup>17</sup> *Id.* at 1 (the permitted design capacity of the WSL is approximately 7,033,102 tons, which is the same as “the total combined waste mass disposed in the Unlined MSW Area, the Phase I, II, & III areas, and the North/South area” as of the end of 2023).

<sup>18</sup> See *supra*, note 12, at 12.



the DEP are not able to account. Augmenting this unacceptable pollution from tracked mud and dirt, the diesel trucks consistently carrying waste to the WSL and departing from the WSL create air pollution from burning diesel fuel which the DEP figures for emissions do not apparently account for. The WSL is undeniably a but-for cause of these emissions, and these automobile emissions should be considered as part of any decision to renew the Title V permit for the WSL. In light of these unlawful and ongoing sources of air pollutants and potentially radioactive emissions, the DEP should deny the WSL's permit renewal application.

The WSL Title V Permit Should Not be Renewed Because There is no Present, Viable Plan for Dealing With the Radioactive Leachate Present and Accumulating at the Landfill

Because the WSL has no present, viable plan for dealing with the radioactive leachate at the landfill, the DEP should not renew the Title V air permit for the WSL. This radioactive leachate at the WSL evaporates and releases toxic fugitive emissions when exposed to the open air, as has happened repeatedly in the past. This air pollution poses an unacceptable health risk to the surrounding community both in the short term and the long term.

The WSL accepts oil and gas drill cuttings for disposal, which contain radioactive materials including Radium-226 and Radium-228.<sup>19</sup> These radioactive materials were going to be managed via a leachate evaporator, but the WSL recently abandoned its plan to dispose of leachate using a leachate evaporator without identifying a replacement plan for managing the radioactive leachate still present at the landfill.<sup>20</sup> Although the WSL previously dealt with its leachate through connections to Publicly Owned Treatment Works (POTW) facilities in Belle

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<sup>19</sup> See *supra*, note 11; Letter from Melissa L. Javita to Air Quality Permit File PA-65-00767C, 23 February 2023, Comment and Response Document Westmoreland Sanitary Landfill, LLC Rostraver Township, Westmoreland County, Commonwealth of Pennsylvania Department of Environmental Protection Southwest Regional Office, at 21-23.

<sup>20</sup> Letter from Brian Stewart to Mr. Mark Gorog, 16 September 2024, Westmoreland Sanitary Landfill, LLC – Sanitary Landfill Withdrawal of Leachate Evaporator Plan Approval Rostraver Township, Westmoreland County, Pennsylvania, Noble Environmental.

Vernon and Mon Valley, these connections are no longer active due to the inability of these POTW facilities to safely handle radioactive materials in leachate.<sup>21</sup>

Since 2019, this radioactive leachate has been managed by interim storage in “Frac Tanks” and truck hauling away from the landfill.<sup>22</sup> These Frac Tanks subsequently filled to the point of leaking out of their tops and over the sides of the tanks, exposing the radioactive leachate to the open air where it inevitably evaporated, leaving evidence in the form of brown stains on the Frac Tanks.<sup>23</sup> This indicates that the particulate components in the leachate also evaporated, including Radium-226 and Radium-228. It is not possible for WSL or the DEP to estimate how much radium or other air pollutants were emitted into the air due to this event, which apparently took place on multiple occasions without proper radiation monitoring by regulators or landfill operators.<sup>24</sup> This plan for dealing with the radioactive leachate was unviable, and there is no indication in the present Title V air permit renewal application that this plan or any alternative plan will become viable for managing radioactive leachate without unacceptable levels of fugitive air emissions.<sup>25</sup>

At present, this leaves the WSL not having proposed any viable plan for preventing the off-gassing of radioactive leachate into the air, which spreads radiation and other fugitive air pollutants without proper authorization as required by 25 Pa. Code § 123.1. It is implausible to

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<sup>21</sup> Form 25 Leachate Management - Phase II, Westmoreland Sanitary Landfill, LLC, Nov. 2023, [https://files.dep.state.pa.us/RegionalResources/SWRO/SWROPortalFiles/Community%20Info/Westmoreland\\_Sanitary\\_Landfill/10\\_1\\_24/SANITARY-LANDFILL-MINOR-MOD-FORM-25.PDF.pdf](https://files.dep.state.pa.us/RegionalResources/SWRO/SWROPortalFiles/Community%20Info/Westmoreland_Sanitary_Landfill/10_1_24/SANITARY-LANDFILL-MINOR-MOD-FORM-25.PDF.pdf), at Page 25-3(2) (last visited Nov. 13, 2024); Consent Order and Agreement, Commonwealth of Pennsylvania Department of Environmental Protection, Feb. 13, 2020, [https://files.dep.state.pa.us/RegionalResources/SWRO/SWROPortalFiles/WSL\\_COA.pdf](https://files.dep.state.pa.us/RegionalResources/SWRO/SWROPortalFiles/WSL_COA.pdf), at 2-4 (last visited Nov. 14, 2024).

<sup>22</sup> Consent Order and Agreement, Commonwealth of Pennsylvania Department of Environmental Protection, Nov. 1, 2023, [https://files.dep.state.pa.us/RegionalResources/SWRO/SWROPortalFiles/Community%20Info/Westmoreland\\_Sanitary\\_Landfill/WSL\\_Consent\\_Order\\_and\\_Agreement\\_11.1.2023\\_executed.pdf](https://files.dep.state.pa.us/RegionalResources/SWRO/SWROPortalFiles/Community%20Info/Westmoreland_Sanitary_Landfill/WSL_Consent_Order_and_Agreement_11.1.2023_executed.pdf), at 8 (last visited Nov. 13, 2024).

<sup>23</sup> *Id.* at 8-11.

<sup>24</sup> *Id.*

<sup>25</sup> Proposed Title V State Operating Permit 65-00767, Westmoreland Sanitary Ldfl LLC/Belle Vernon, October 17, 2024.

suggest that the WSL will comply with the permit renewal for which it has applied under these circumstances. The DEP should therefore deny the application for renewal of the Title V air quality permit until such time that the WSL proposes and has approved a viable plan for safely managing the radioactive leachate currently accumulating in an uncontrolled fashion at the landfill. Any other decision would endanger surrounding communities and future generations with exposure to uncontrolled air pollutants and radioactive hazards.

The WSL Title V Permit Should Not be Renewed Because The WSL is Presently in Violation of a November 2023 Consent Order Issued by the DEP, Indicating a Propensity to Violate DEP Regulations and Permit Fugitive Air Emissions from Open-Air Contaminated Liquids

Based on reports from local residents, Protect PT understands that many of the violations detailed in the November 23, 2023 consent order between WSL, LLC and the DEP have not been ameliorated, and will not foreseeably be ameliorated. The violations listed in the consent order include (1) a failure to provide immediate notification of the release of leachate, (2) a failure to properly maintain valve and cap equipment on leachate tanks, (3) an overfilling of leachate storage tanks above 25% of capacity, (4) a failure to prevent mud, dirt, and sediment tracking onto public roads in violation of not only Pennsylvania regulations but also a 2020 consent order between WSL, LLC and the DEP, (5) creating and failing to control public nuisances from landfill odors outside the property, (6) dumping industrial waste into Pennsylvania waters and leachate onto the ground without authorization from the DEP, (7) failing to implement a prior-instituted Nuisance Odor Mitigation Plan, and (8) failing to perform comprehensive site inspections and repairs to correct deficiencies.

Although the Department has made a preliminary conclusion that these violations have been or are being corrected, Protect PT has received numerous complaints from local residents that mud, dirt, and sediment are still being tracked from the landfill onto Tyrol Blvd, and that

strong landfill odors still permeate the air outside the property, including the smell of sulfur.<sup>26</sup> Further, the lack of a current, approved plan for managing the leachate generated at the WSL casts doubt on the proposition that the WSL is properly managing the leachate generated at the landfill through a method other than the one which the WSL failed to implement properly through the use of Frac Tanks in the past. Many of the violations detailed in the 2023 consent order repeat violations detailed in the consent order between WSL, LLC and the DEP in 2021.<sup>27</sup> This flagrant pattern of non-compliance with multiple DEP regulations casts doubt on the reliability of WSL, LLC's representations to the DEP that WSL, LLC will comply with the regulations set forth in the proposed renewed Title V air quality permit.<sup>28</sup>

Even though some of the perpetual violations concern solid waste and water pollution violations rather than air pollution violations, the credibility of WSL, LLC's representations is damaged by WSL, LLC's persistent violation history in the face of multiple consent agreements and ongoing violations. This is not to say that WSL, LLC is knowingly misrepresenting its future compliance with conditions in any renewed Title V air quality permit, but that WSL, LLC has a demonstrated inability to comply with conditions in permits and consent orders even when required to do so by regulations and statutes. Combined with the practical inability of WSL, LLC to control, track, and monitor certain fugitive emissions from the property, this suggests that WSL, LLC will not comply with the required regulations and limitations incorporated into the permit. This further makes it more likely that the actual emissions calculations given for the

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<sup>26</sup> See *supra*, note 16.

<sup>27</sup> Consent Order and Agreement, Commonwealth of Pennsylvania Department of Environmental Protection, Apr. 28, 2021, [https://files.dep.state.pa.us/RegionalResources/SWRO/SWROPortalFiles/Community%20Info/Westmoreland\\_Sanitary\\_Landfill/Westmoreland\\_CACP\\_4-28-2021.pdf](https://files.dep.state.pa.us/RegionalResources/SWRO/SWROPortalFiles/Community%20Info/Westmoreland_Sanitary_Landfill/Westmoreland_CACP_4-28-2021.pdf), at 2-3 (last visited Nov. 14, 2024).

<sup>28</sup> See *generally St. Rd. Bar & Grille, Inc. v. Pa. Liquor Control Bd.*, 876 A.2d 346, 357-58 (Pa. 2005).

WSL are not accurate given WSL, LLC's propensity for making inaccurate statements and forecasts about its regulatory compliance.

Under these circumstances, the DEP should not trust WSL, LLC as to its compliance with regulations and its forecasts of air emissions. These representations are unreliable so long as WSL, LLC fails to honestly comply with its other promises made to the DEP in the recent past. The DEP should deny the renewal of the Title V air quality permit until such time that WSL, LLC demonstrates its compliance with all prior agreements between WSL, LLC and the DEP.

The WSL Title V Permit Should Not be Renewed Because the Permit Application Does Not Consider Changes in Emissions from the Monessen Coke Works in Compliance with the Environmental Rights Amendment

The WSL Title V permit should not be renewed because the permit application does not indicate that WSL, LLC has considered the cumulative impacts of the change in emissions from the WSL in light of changes in the emissions of the nearby Monessen Coke Works. Approval of WSL, LLC's lack of consideration of these cumulative impacts by the DEP would violate the DEP's constitutional duty as a Pennsylvania public entity to "consider in advance of proceeding the environmental effect of any proposed action."<sup>29</sup> The failure to obtain information on these cumulative impacts "does not excuse the constitutional obligation because the obligation exists a priori to any statute purporting to create a cause of action."<sup>30</sup>

The Monessen Coke Works, approximately 1.75 miles from the Westmoreland Sanitary Landfill, has indicated plans to shut down an existing boiler for repair in February of 2025 and shut down a second boiler for repair in February of 2026, each to be replaced for one year of repair time by a temporary boiler until February of 2027.<sup>31</sup> This modification is expected to

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<sup>29</sup> *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 952 (Pa. 2013).

<sup>30</sup> *Id.*

<sup>31</sup> Plan Approval Permit Application Temporary Boiler PA-65-00853B For: Cleveland-Cliffs Monessen Coke LLC Monessen Coke Plant, 345 Donner Avenue Monessen, Pennsylvania 15062, September 6, 2024, at 35.

increase emissions of PM-10 and PM-25 both by 0.72 tons per year from 2025 to 2027, will increase carbon monoxide emissions by 60.61 tons per year during the same period, and will increase emissions of VOCs by 7.85 tons per year during the same period.<sup>32</sup>

Although these changes may not be considered significant in isolation, their impact on the residents of Monessen, especially those who live less than one mile from both the Monessen Coke Works and the WSL at the same time, must be considered in aggregate with the impacts of the renewal of the Title V air quality permit for the WSL. Far from being unable to perform this analysis, the DEP already has projected emissions data for both of these projects. Despite this, the Monessen Coke Works modification is not discussed by the DEP in any publicly available reviews or analyses of the WSL Title V permit renewal application.

This failure to consider cumulative impacts from multiple permit issuances and renewals in the same geographic area also violates the PA DEP's trustee duties under the environmental rights amendment to act with "ordinary skill, prudence, and caution," and to "balance the interests of present and future beneficiaries," including those future residents of Monessen who will suffer from multiple sources of new pollution the same as if these sources were aggregated as one single source, even after those sources of pollution are long gone and the goods and services provided by those pollution sources have been depleted.<sup>33</sup> The PA DEP should not grant the renewal of the Title V air quality permit for the WSL until it has fully considered the cumulative impact of the WSL's permit renewal along with all other present and foreseeable future permit renewals and issuances in the surrounding area.

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<sup>32</sup> *Id.* at 44.

<sup>33</sup> *Robinson Twp.*, 83 A.3d at 957, 959.

### Conclusion

For these reasons, the PA DEP should not issue the Westmoreland Sanitary Landfill Air Quality Title V Operating Permit Renewal TVOP-65-00767 at this time. The PA DEP should only consider renewing the Title V permit for the WSL when WSL, LLC can show that it can meet its obligations under Pennsylvania's Article 1 Section 27 rights to clean air and water, comply with its existing regulatory obligations and agreements with the DEP, and refrain from unequally and unlawfully infringing on the rights, health, and safety of Pennsylvania's citizens living in the surrounding communities.

Sincerely,



Dylan Basescu  
Staff Attorney  
Protect PT



Gillian Graber  
Executive Director  
Protect PT