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***VIA FEDEX AND EMAIL***

Chairman Jeff Phillips  
District 17 Commissioner  
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Re: Notice of Intent to Identify Rutherford County as Indispensable Party  
City of Murfreesboro v. BFI Waste Systems of Tennessee, LLC, *et al.*

Dear Chairman Phillips:

We write as a courtesy to provide you with advance notice of our filing of a motion identifying Rutherford County as an indispensable party to the recently filed lawsuit *City of Murfreesboro, Tennessee v. BFI Waste Systems of Tennessee, LLC, Republic Services of Tennessee, LLC, and Republic Services, Inc.*, No. 3:22-cv-00605 (M.D. Tenn. Aug. 10, 2022).

On August 10, 2022, the City of Murfreesboro, Tennessee (the "City") filed a lawsuit against BFI Waste Systems of Tennessee, LLC, Republic Services of Tennessee, LLC, and Republic Services, Inc. (collectively, "Defendants") alleging various tort and contract-based claims arising from the alleged release of odors and contaminated leachate from the Middle Point Landfill in Rutherford County, Tennessee. We vehemently deny most of the City's allegations and intend to fully defend ourselves and ensure the accurate facts are brought to light. However, the City's lawsuit also makes numerous allegations which inherently impact and trace to Rutherford County and the Rutherford County Landfill. In the spirit of cooperation, we are alerting the County Commission to these issues now so that Rutherford County may be able to begin an early evaluation of its options.

As part of our response to the City's allegations, we intend to file Motions to Dismiss, asserting among other things, that the City's Complaint should be dismissed because the City failed to include Rutherford County as an "indispensable party" to the lawsuit. A copy of the motion is attached to this letter.

The need to identify Rutherford County as an indispensable party arises out of the City's allegations of a spring discharge to the East Fork Stones River and the June 9, 1995 agreement ("Agreement") between BFI Waste Systems of Tennessee, LLC, and the City regarding leachate disposal. Under the Agreement, BFI pretreats its leachate prior to discharge to the City's publicly owned treatment works ("POTW"), as well as accepting untreated leachate from the Rutherford County Landfill for onsite pretreatment prior to discharge. However, it appears that Rutherford County Landfill does not have a fully functional leachate extraction system, which may be the functional cause of some so-called contamination in the East Fork Stones River as alleged by the City and explained further below.

The City alleges groundwater from a "spring discharge" is contaminating the East Fork Stones River. We have thoroughly evaluated the City's allegations and concluded there is no plausible way the discharge could be the result of the Middle Point Landfill. Foremost, the discharge is upgradient of the Middle Point Landfill. Groundwater flow at the Middle Point Landfill is not toward this discharge point. In addition, our research shows that Rutherford County Landfill Monitoring Well 1 (MW-1) is located directly near the location of the alleged discharge. A 2017 Quarterly Groundwater Assessment Monitoring report for Rutherford County Landfill indicated that MW-1 was in assessment for VOC impacts attributable to landfill gas. The "spring discharge" the City alleges is downgradient and near this well with potential landfill gas impacts. Furthermore, the Rutherford County Landfill's primitive leachate collection system may not be capturing all of the leachate, which could result in off-site impacts to groundwater. Put more simply, it appears that the "spring discharge" the City alleges is attributable to the Middle Point Landfill is most likely, if true, instead caused by migration of contaminants from the Rutherford County Landfill.

In addition, the City has alleged that landfill leachate is a known contributing source of PFAS but chose not to directly sue Rutherford County. Based on the City's allegations that PFAS are "well-known constituents of landfill leachate" and that the commingled leachate discharge from Middle Point Landfill contains PFAS, Middle Point Landfill and Rutherford County Landfill's combined leachate would have jointly contributed to any alleged harm suffered by Plaintiff. The City seeks to prohibit any further discharge of leachate from Middle Point Landfill and/or require additional pretreatment of the commingled leachate with Rutherford County Landfill's discharge.<sup>1</sup>

If Middle Point Landfill's ability to dispose of their leachate is cut off, then this inherently eliminates Rutherford County's ability to dispose of leachate as well, resulting in Rutherford County incurring additional costs for leachate disposal. Likewise, if the City were to prevail on their request to install PFAS pre-treatment technology, it would likely come at a significant cost there is no current cost effective or efficient way to remove and destroy PFAS from landfill leachate on a large scale. To date, the County has disposed of leachate for free via the Middle Point Landfill pre-treatment plant for many decades. The City's lawsuit seeks to terminate and/or place significant restrictions upon that disposal outlet, and for both these reasons – contribution and the cost of pre-treatment – BFI would be left with no choice but to pass a portion of any cost on to Rutherford County. As a direct consequence of the City's shortsighted lawsuit, there may be additional expenses that would surely be passed on to the citizens and taxpayers of Rutherford County.

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<sup>1</sup> While the Middle Point Landfill pre-treatment plant currently allows for ultra-filtration, it is not constructed to treat for the removal or destruction of PFAS. In fact, treatment technologies for the removal or destruction of PFAS are still in the technical stages of development.



Therefore, for the reasons outlined above, the lawsuit thus cannot be conclusively resolved without the County included as a party to represent its own interests. It was not our intent to involve the County into our ongoing conversations with City, and certainly not to involve the County in federal litigation, but the City has made it impossible to proceed in any other way.

As neighbors, Rutherford County and MPL have and continue to enjoy a collaborative working relationship, and we hope that the City's reckless decision to pursue litigation based on unfounded allegations does not impede that partnership. If you have any questions, or would like to discuss the foregoing, please do not hesitate to contact us via email at [wells.trompeter@wallerlaw.com](mailto:wells.trompeter@wallerlaw.com) or phone at (615) 850-8759.

Sincerely,



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Waller

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