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January 30, 2026

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Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: *CSX Transportation, Inc.—Petition for Declaratory Order*, STB Docket No. FD 36886

Dear Ms. Brown:

Enclosed for e-filing, please find the Reply of the South Baltimore Community Land Trust, Inc. in the above-captioned proceeding. Please do not hesitate to contact me with any questions.

Respectfully submitted,

Leah Kelly

Counsel for South Baltimore Community Land Trust, Inc.

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36886

**CSX TRANSPORTATION, INC.
PETITION FOR DECLARATORY ORDER**

**REPLY OF THE
SOUTH BALTIMORE COMMUNITY LAND TRUST, INC.**

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Table of Contents

I.	Introduction	1
II.	Factual Background	2
	A. The CSX Terminal	2
	B. CSX Permit Renewal	3
III.	Legal Background	5
	A. The Federal Clean Air Act	5
	i. Regulation of mobile v. stationary sources of pollution under the CAA	6
	ii. Federal and state authority under the CAA.	8
	iii. EPA approval of relevant MDE regulations.	12
IV.	The Board Must Harmonize ICCTA with the CAA and Find that Condition of CSX’s Permit is Not Preempted	13
	A. The CAA and ICCTA Must Be Harmonized Unless There is an Irreconcilable Conflict Between the Two.....	13
	i. Two federal statutes must be harmonized absent an irreconcilable conflict. 13	
	ii. Congress did not intend ICCTA to repeal the CAA.....	16
	iii. ICCTA, as a general statute, does not nullify the CAA, a more specific one.....	16
	B. Permit Condition D is, At Minimum, a Federally Enforceable and Federally Mandated Requirement Issued Under MDE’s Federal Authority	17
	i. MDE’s EPA-approved regulation at COMAR 26.11.06.03(C) requires MDE to make facility-specific determinations about pollution control measures at the CSX Terminal.....	17
	ii. Separate EPA approval is not needed to make Condition D federally enforceable	19
	iii. Even if Condition D were a state law, it would not be preempted by ICCTA.....	22
	C. Condition D Can Be Harmonized with the Board’s Authority Under ICCTA...24	
V.	MDE Did Not Discriminate Against a Rail Carrier By Adding Condition D to the CSX Permit.	26
VI.	CSX Has Not Demonstrated that Condition D Unreasonably Burdens Rail Transportation	28
VII.	Conclusion	30

I. Introduction

CSX Transportation, Inc. (“CSX”) seeks a declaratory order from the Surface Transportation Board (“Board”) that the Maryland Department of the Environment (“MDE”) is preempted by the Interstate Commerce Commission Termination Act (“ICCTA”), 49 U.S.C. § 10501(b), from requiring certain air pollution control measures at CSX’s coal shipping terminal in Baltimore, Maryland (“CSX Terminal” or “Terminal”). CSX Petition for Declaratory Order, Nov. 19, 2025 (“CSX Petition” or “Petition.”) Specifically, in 2025, MDE required installation of a windscreen at CSX’s Terminal to control particulate matter, a requirement that does not regulate the locomotives or other mobile sources that serve the Terminal.

CSX’s Petition seeks to significantly expand the scope of ICCTA preemption and punch unprecedented holes in state agency authority to regulate stationary air pollution sources under the federal Clean Air Act. CSX inexplicably suggests that MDE’s new requirement might subject CSX to a patchwork of inconsistent state-by-state regulations, despite the impossibility of a second state imposing conditions on CSX’s Terminal in Baltimore.

CSX’s Petition is also rife with misleading statements implying that CXS’s permit may be one of the strongest in the entire state compared with other facilities. It is not. It is an improvement when compared with previous versions of the same permit.

MDE unquestionably has federal authority to issue the windscreen requirement, conferred in 2003 by the U.S. Environmental Protection Agency (“EPA”) under the Clean Air Act. Yet CSX spends the majority of its Petition discussing inapplicable standards and decisions issued in the context of ICCTA preemption of state or local laws. The federal courts have been unequivocal that potential conflicts between two federal laws are viewed differently and that both federal laws must be given effect absent certain circumstances that do not exist here.

CSX’s request to expand the scope of ICCTA preemption is particularly troubling because, in the Clean Air Act, Congress addressed the risk of inconsistent state regulation by treating mobile pollution sources differently from stationary facilities, like the CSX Terminal. In this case, ICCTA preemption is only potentially triggered because CSX, as a company, is classified as a rail carrier and not because of the nature of the activities it conducts at its Terminal. *See Valero Ref. Co. — Petition for Declaratory Ord.*, FD 36036, 2016 WL 5904757, slip op. at 4 (S.T.B. served Sept. 20, 2016)(“The Board's jurisdiction extends to rail-related activities that take place at transloading . . . facilities [only] if the activities are performed [or directed] by a rail carrier.”)

The South Baltimore Community Land Trust (“SBCLT”) owns multiple real properties located close to the Terminal and has a strong interest in reducing coal dust emissions from the Terminal.¹ SBCLT respectfully requests that the Board deny CSX’s Petition.

II. Factual Background

A. The CSX Terminal

The CSX Terminal is located at 1910 Benhill Avenue, Baltimore City, Maryland, in the Curtis Bay area of the southern part of Baltimore. CSX Petition Ex. 2. The Terminal’s open coal piles are located less than 1,000 feet away from the residential area of Curtis Bay. This is significantly closer to residences than Maryland’s other coal terminal, which is owned by Consol and located at 3800 Newgate Avenue, Baltimore, MD 21224. Ex. 1. The coal piles at the Consol Terminal are about a mile from the nearest residential area.

The CSX Terminal has had a troubling history, especially over the last four years. In December 2021, there was a large explosion at the Terminal. Ex. 2. Following the explosion,

¹ SBCLT is submitting a petition for leave to intervene on the same day as this reply.

MDE sent CSX a notice of violation dated July 20, 2022 noticing five violations of air quality laws. Ex. 3. Among these was a violation of Maryland’s requirement to take reasonable precautions to prevent particulate matter from becoming airborne. *Id.* On June 29, 2022, the federal Occupational Safety and Health Administration (“OSHA”) sent CSX a Citation and Notification of Penalty identifying eleven violations of the Occupational Safety and Health Act of 1970 associated with the explosion, nine of which were classified as serious violations. Ex. 4. CSX also released a report dated July 29, 2022 in which CSX’s consultants found that the cause of the explosion was a build-up of methane in the tunnel below the Terminal through which coal is shipped. Ex. 2, Executive Summary.

On September 9, 2024, MDE sent CSX another notice of violation, this time for violations of air quality laws occurring on September 5, 2024. Ex. 5. This also included a violation of CSX’s duty to take reasonable precautions to prevent particulate matter from becoming airborne. *Id.*

B. CSX Permit Renewal

Under the Clean Air Act, stationary (non-mobile) sources like the CSX Terminal often must obtain air pollution permits for their activities, including permits allowing their operation so long as they meet certain air pollution control requirements. CSX maintains a state permit to operate, which is generally for sources classified as “minor” air pollution sources in Maryland. *See* COMAR 26.11.02.13(38) (requiring “[c]oal or ore export loading or unloading installations” to obtain a permit to operate). Permittees are typically required to renew a state permit to operate every five years. COMAR 26.11.02.04(C)(1).

On July 29, 2025, MDE issued a final renewed state permit to operate for the CSX Terminal (“CSX Permit,”), CSX Petition, Ex 2., after holding a public comment period and a

public hearing on a draft version of the permit. CSX Petition at 11. CSX complains that this was an “unprecedented permit renewal process” for this type of permit, CSX Petition at 9, but the delay itself caused CSX no harm. During the permit renewal process, CSX continued to operate under the permit to operate that it received in 2018, which was administratively extended. *Id.*, FN 9. In fact, this delay was to CSX’s benefit as CSX was allowed to operate under a more lenient permit for longer than if MDE had renewed and strengthened its permit in 2023 shortly after receiving CSX’s renewal application. *See* CSX Petition at 9.

In the July 29, 2025 CSX Permit, MDE included the conditions below:²

Part D - Physical Barrier and Dust Control Requirements

(1) The Permittee shall construct a windscreen to minimize coal dust being transported from any coal storage piles on the site into the surrounding community. The windscreen must at a minimum surround all coal storage piles, either individually or in a single enclosure within the facility's property boundary, except where openings are needed to allow vehicular access into and out of the interior of the structure or where necessary to allow for the movement of coal into or out of the structure via conveyors or rail. The maximum coal pile height shall be maintained at a level that is less than the height of the windscreen at all times.

(2) Within 120 days following the issuance date of this Permit to Operate, the Permittee shall send a notification to and seek approval from the Department on the type of windscreen that it intends to use to satisfy the Part 0(1) requirement of this Permit to Operate. The notification shall include revisions to the Fugitive Dust Plan applicable when the windscreen chosen to satisfy the Part 0(1) requirement is in operation. Once approved by the Department the revisions will be incorporated into the Permit to Operate

(3) Within 18 months of the Department's approval of the Permittee's windscreen, unless a different timeline is specified in the Department's approval, the Permittee shall complete construction and place in operation the windscreen required under the Part 0(1) requirement of this Permit to Operate.³

² Hereinafter Part D Conditions 1-3 will be referred to as “Permit Condition D,” “Condition D” or the “Windscreen Requirement.”

³ CSX states that it must meet a pollution limit for “visible emissions.” CSX Petition at 9. However, this limit applies only if a source is not complying with Maryland’s “reasonable precautions” requirements for the control of particulate matter at COMAR 26.11.06.03(C) and (D). COMAR 26.11.06.02 (visible emissions limit does not apply to “sources in compliance with

SBCLT submitted written comments during the public comment period and testified during the public hearing. SBCLT has also appealed the CSX Permit in the Maryland Circuit Court for Baltimore City. *SBCLT v. MDE*, Baltimore City Circuit Court, Civil Case No. C-24-CV-25-00757. Ex. 1 to SBCLT Petition to Intervene. In response to CSX’s motion to dismiss, this case has been stayed pending the outcome of an administrative proceeding in Maryland, called a contested case hearing. Office of Administrative Hearings (“OAH”) Case No. MDE-ARMA-012-25-25750. Ex 2 to SBCLT Petition to Intervene; *see* CSX Petition at 11, FN 6 (referencing contested case). It is SBCLT’s understanding that this contested case proceeding has been postponed pending the outcome of this matter before the Board.

III. Legal Background

A. The Federal Clean Air Act.

The federal Clean Air Act (“CAA”), 42 U.S.C. § 7401 *et. seq.*, is “the primary mechanism under which emissions in the United States are managed.” *North Carolina v. TVA*, 615 F.3d 291, 298 (4th Cir. 2010). The Supreme Court has characterized the CAA as “a comprehensive national program that makes the States and the Federal Government partners in the struggle against air pollution.” *Gen. Motors Corp. v. U.S.*, 496 U.S. 530, 532 (1990).

i. Regulation of Mobile v. Stationary Sources of Pollution Under the CAA

The CAA is structured to distinguish between regulation of “mobile sources,” which move from place to place, and “stationary sources,” which are generally in a fixed location and

Regulation .03C and D of this chapter.”) MDE used its authority under COMAR 26.11.06.03(C) to establish the requirements that CSX now challenges in its Petition.

do not move.⁴ Section 209 of the CAA, 42 U.S.C. § 7543, places significant restrictions on state authority to regulate most moving sources. Among other constraints, Section 209 “preempts state regulation of emissions for new locomotives” while preserving “a role for California to regulate emissions for non-new locomotives subject to authorization by the EPA.” *Ass’n of Am. R.R. v. Randolph*, 2024 WL 4347408, at *1 (E.D. Cal. 2024).

Federal courts have found that Congress limited state authority to regulate moving sources in the CAA to avoid the “patchwork of state-by-state regulations” that CSX suggests is a danger posed by the new condition in its permit. CSX Petition at 5–6. The D.C. Circuit Court of Appeals has explained that:

In contrast to federally encouraged state control over stationary sources, regulation of motor vehicle emissions had been a principally federal project . . . The regulatory difference is explained in part by the difficulty of subjecting motor vehicles, which readily move across state boundaries, to control by individual states. Congress had another reason for asserting federal control in this area: the possibility of 50 different state regulatory regimes “raised the spectre of an anarchic patchwork of federal and state regulatory programs, a prospect which threatened to create nightmares for the manufacturers. . . . Two years after authorizing federal emissions regulations, therefore, Congress preempted the states from adopting their own emissions standards. The Second Circuit has referred to this preemption as “the cornerstone” of Title II, the portion of the CAA that governs mobile pollution sources.

Engine Mfrs. Ass’n v. U.S. EPA, 88 F.3d 1075, 1079 (D.C. Cir. 1996)(emphasis added) (internal citations omitted).

⁴ Though not relevant to the ICCTA preemption claims in the CSX Petition, there is evidence that Congress intended certain emissions from marine vessels to be treated as part of stationary sources. *See, e.g.*, EPA New Source Review Workshop Manual Draft Oct. 1990 (“NSR Manual”) at A.18, <https://www.epa.gov/nsr/nsr-workshop-manual-draft-october-1990> (“As a result of a court decision in *NRDC v. EPA*, 725 F.2d 761 (D.C. Circuit 1984), emissions from vessels at berth (“dockside”) [sic] not to be included in the determination of secondary emissions but are considered primary emissions for applicability purposes.”)

As noted by the D.C. Circuit, Congress did not elect to place the same restrictions on state authority to regulate stationary sources. 42 U.S.C. § 7416. (“Except as otherwise provided in [§§]1857c-10(c),(e), and (f) (as in effect before August 7, 1977), 7543, 7545(c)(4), and 7573 of this title (preempting certain State regulation of moving sources) nothing in this chapter shall preclude or deny the right of any State . . . to adopt or enforce” air pollution requirements that are not less stringent than any federal corollary); *Engine Mfrs. Ass’n*, 88 F.3d at 1079.

One significant difference between stationary and mobile source regulation under the CAA is that permits must be obtained for construction, modification, and operation of stationary sources. 42 U.S.C. § 7475 (preconstruction permits for stationary sources in attainment areas); 42 U.S.C. § 7503 (preconstruction permits for stationary sources in nonattainment areas); 40 C.F.R. § 51.160 *et. seq.* (minor source preconstruction permit program;); 42 U.S.C § 7661 *et. seq.* (operating permit program).

The CSX Terminal is considered a stationary source of pollution under the CAA because it is in a fixed location and cannot move from place to place. *See* COMAR 26.11.02.01(B)(54)(“Stationary source” means a building, structure, facility, or installation that emits or may emit a regulated air pollutant or a pollutant listed under § 112(b) of the Clean Air Act.”; CSX Permit at 1 (stating applicability to “stationary source process related equipment”) CSX Petition at 8 (“ The stationary source subject to the Permit to Operate is the existing coal transloading facility.”)⁵

⁵ CSX claims initially that it is “not asking the Board to find that the whole MDE permit is preempted by ICCTA,” CSX Petition at 3, then argues that ICCTA preempts MDE from requiring it to hold an operating permit. CSX Petition at 16–17.

The Board and the courts have previously considered whether ICCTA preempts state laws that might, in the future, be approved by the EPA under the CAA, in situations where the laws directly regulated locomotives. *See, e.g., EPA — Petition for Declaratory Ord.*, FD 35803, 2014 WL 7392860, slip op. at 8–9 (S.T.B. served Dec. 29, 2014)(California air district locomotive idling restrictions would likely be preempted by ICCTA even if approved by EPA “because of the potential patchwork of [state] regulations that could result, contravening Congress’s purpose in enacting [ICCTA’s preemption provision at 42 U.S.C.] § 10501(b).”); *Ass’n of Am. R.R. v. S. Coast Air Quality Mgmt. Dist.*, 622 F.3d 1094, 1098 (9th Cir. 2010)(California district locomotive idling rules not yet submitted for EPA approval are state laws subject to state law preemption test and preempted by ICCTA); *Randolph*, 2024 WL 4347408 at *13 (declining to decide whether California emission reduction and other requirements for locomotives may be preempted by ICCTA until after EPA determines whether to approve the California regulations).

It appears that neither the Board nor the courts have previously considered a case in which a party claimed that ICCTA preempts CAA regulation of a stationary source.

ii. Federal and state authority under the CAA.

States are not only authorized but compelled to regulate stationary sources under the CAA. One requirement imposed by the CAA on states is the duty to develop State Implementation Plans for the attainment and maintenance of National Ambient Air Quality Standards (“NAAQS”), 42 U.S.C. § 7410(a)(1) which are issued by the EPA. 42 U.S.C. § 7409.

The Fourth Circuit has explained that

[i]n light of the fact that Congress recognized that air pollution prevention ... and air pollution control at its source is the primary responsibility of States and local governments, 42 U.S.C. § 7401(a)(3), decisions regarding how to meet NAAQS are left to individual states. 42 U.S.C. § 7410(a)(1). Pursuant to this goal, each state is required to create and submit to the EPA a State Implementation Plan (SIP) ‘which provides for implementation, maintenance, and enforcement of [NAAQS] ... within

such State.’ *Id.* While states are responsible for promulgating SIPs, they must do so consistently with extensive EPA regulations governing preparation, adoption by the state, and submission to the EPA, 40 C.F.R. § 51, and all SIPs must be submitted to the EPA for approval before they become final. 42 U.S.C. § 7410(a)(1). *Once a SIP is approved, however, its requirements become federal law and are fully enforceable in federal court.*

North Carolina, 615 F.3d at 299 (emphasis added); *see also Mirant Potomac River, LLC v. EPA*, 577 F.3d 223, 227 (4th Cir. 2009)(“Upon approval by EPA, the SIP becomes a binding federal regulation.”) The Fourth Circuit further explained that “[s]tates are accorded flexibility in determining how their SIPs are structured, but regardless of their choices, SIPs must ‘include enforceable emission limitations and other control measures, means, or techniques’” to ensure that each state meets NAAQS.” *North Carolina*, 615 F.3d at 299 (quoting 42 U.S.C. § 7410(a)(2)(A)).

SIPs are required even if a state is not failing to meet the NAAQS. SIP requirements in attainment areas are generally referred to as “maintenance” requirements. *See* 42 U.S.C. § 7410(a)(1)(requiring SIPs to provide for “maintenance” of the NAAQS, not just attainment.)

Whether an emissions control requirement is federally enforceable or enforceable only under state law is a critical distinction under the CAA. Federally enforceable requirements can be enforced in federal court by the EPA and members of the public. 42 U.S.C. §§ 7604(a)(1), 7413. Permit agencies, when issuing permits under the CAA’s Title V program for the operation of (mostly) major pollution sources, must identify conditions that are federally enforceable versus “state-only enforceable.” 40 C.F.R. § 70.6(b)(2) (state-only enforceable conditions are “those not required under the [CAA] or under any of its applicable requirements.”)

In Maryland Title V permits, facility-specific conditions are divided into two sections: one for federally enforceable conditions and one for state-only enforceable permit conditions.⁶ For example, the permit for the Mettiki coal processing and preparation plant in Maryland identifies the duty to take reasonable precautions to control particulate matter from unconfined sources, codified at COMAR 26.11.06.03C, in the federally enforceable permit conditions. Mettiki Coal, LLC, Part 70 Operating Permit No. 24-023-0042 (“Mettiki Permit”), Federally Enforceable Condition 3.1(B)(1). Ex. 6 at 40. The permit conditions necessary for implementing COMAR 26.11.06.03C are also identified as federally enforceable permit conditions. Ex. 6 at 40–42. In the Mettiki Permit, MDE requires that the Mettiki plant implement COMAR 26.11.06.03(C) by maintaining and updating as necessary a Best Management Practices Plan and a record of the date and times when the reasonable control actions are completed. Ex. 6 at 42. This permit condition is properly included in the federally enforceable conditions section of the Mettiki Permit because it implements COMAR 26.11.06.03(C), which is a federally enforceable standard approved by EPA. *See* 40 C.F.R. § 70.6(b).

An emissions control requirement can become federally enforceable through approval by EPA into a SIP. However, this is not the only way in which a CAA requirement becomes federally enforceable. *See U.S. v. Marine Shale Processors*, 81 F.3d 1329, 1354 (5th Cir. 1996) (Congress intended to confer broad powers upon EPA to enforce requirements under the CAA). Conditions in permits are federally enforceable if based on federal requirements without the need for EPA to separately approve each permit. *See, e.g.*, 42 U.S.C. § 7604(f)(4) (allowing citizen

⁶ See Maryland Issued Part 70 Permits, https://mde.maryland.gov/programs/permits/airmanagementpermits/pages/title5_issued_permits.aspx?Paged=TRUE&p_SortBehavior=0&p_FileLeafRef=KMCThermo2024IssuedT5FS%2epdf&p_ID=197&PageFirstRow=51&&View={05B933F6-6A2B-4D2C-84A3-BAEA8C8A5350}.

enforcement suits of “any other standard, limitation, or schedule established . . . under any applicable State implementation plan approved by [EPA], any permit term or condition, and any requirement to obtain a permit as a condition of operations”) 42 U.S.C. § 7413 (EPA may “commence a civil action . . . [w]hensoever [a person] . . . has violated, or in violation of, any requirement or prohibition of an applicable state implementation plan or permit”: 40 C.F.R. § 52.23 (EPA may enforce for failure to comply with “any permit condition . . . issued pursuant to approved or promulgated regulations for the review of new or modified stationary or indirect sources, or with any permit limitation or condition contained within an operating permit issued under an EPA-approved program that is incorporated into the State implementation plan”; 40 C.F.R. § 51.301 (“Federally enforceable means all limitations and conditions which are enforceable by the [EPA] under the [CAA], including. . . any permit requirements established pursuant to [40 C.F.R. § 52.21] or under regulations approved pursuant to [40 C.F.R.] part 51, 52, or 60.”))

This includes conditions implementing federal requirements in state operating permits where EPA has approved the permitting program. *See, e.g.*, 40 C.F.R. § 52.23; *U.S. v. E. Ky. Power Coop.*, 498 F. Supp. 2d 995, 1006–07 (E.D. Ky. 2007) (EPA may enforce condition in state operating permit because permit program was approved in SIP regulations); *U.S. v. La. Pacific Corp.*, 908 F. Supp 835, 842–43 (D. Colo. 1995) (monitoring and reporting requirements in state operating permit were federally enforceable even though not included in Colorado’s SIP because the requirements were issued “pursuant to” the state’s SIP authority and issued via a SIP-approved permit program).

iii. EPA approval of relevant MDE regulations.

On August 6, 2003, the EPA approved a revision to Maryland's SIP that expanded to the entire state MDE's requirements for the control of particulate matter from unconfined sources, set forth in Maryland's regulations at COMAR 26.11.06.03(C). EPA, Approval and Promulgation of Air Quality Implementation Plans; Maryland; Revisions to Visible Emissions and Sulfur Dioxide Testing Regulations, 68 Fed. Reg. 46487 (Aug. 6, 2003). Previously, COMAR 26.11.06.03(C) was only applicable in certain parts of the state.⁷

COMAR 26.11.06.03(C) states:

A person may not cause or permit emissions from an unconfined source without taking reasonable precautions to prevent particulate matter from becoming airborne. These reasonable precautions shall include, *when appropriate as determined by the Department*, the installation and use of hoods, fans, and dust collectors to enclose, capture, and vent emissions. *In making this determination, the Department shall consider* technological feasibility, practicality, economic impact, and the environmental consequences of the decision.

In issuing its approval, the EPA expressly characterized this standard as requiring an additional MDE approval regarding the measures that constitute reasonable precautions for the control of particulate matter from unconfined sources. and that the potential pollution controls that MDE could require include (but are not limited to) those listed in COMAR 11.06.03C. EPA stated:

Regulation .03 of COMAR 26.11.06 establishes general particulate matter emissions standards for sources in the State. Subsection .03C specifically addresses particulate matter emissions from unconfined sources that are not discharged into the outdoor atmosphere through a stack, duct, hood, flue, or other conduit. *The regulation requires these sources to take reasonable precautions, approved by the Maryland Department of the Environment (MDE), to prevent particulate matter from becoming airborne.* Reasonable precautions *include* the installation and use of hoods, fans, and dust collectors to enclose, capture, and vent emissions.

⁷ At the same time, EPA also approved a SIP revision making Maryland's regulatory restriction on "visible emissions" inapplicable to sources operating in compliance with COMAR 26.11.06.03(C) and (D). 68 Fed. Reg. at 46488.

68 Fed. Reg. at 46487–88 (emphasis added).

EPA has also approved MDE’s state operating permit program into Maryland’s SIP. 40 C.F.R. § 52.1070 (approval of Maryland’s state operating permit program into SIP, including COMAR 26.11.02.13, requiring permit to operate for certain sources including “[c]oal or ore export loading or unloading installations.”)

IV. The Board Must Harmonize ICCTA with the CAA and Find that Condition D of CSX’s Permit is Not Preempted.

The Board must harmonize MDE’s federal authority under the CAA to regulate particulate matter emissions from the Terminal with its own jurisdiction under ICCTA unless there is an irreconcilable conflict between the two federal laws. Fortunately, the Board can easily give effect to both its own jurisdiction, which does not cover regulation of air pollution from stationary sources like the Terminal, and MDE’s federal authority to regulate particulate matter emissions from the CSX Terminal.

A. The CAA and ICCTA Must Be Harmonized Unless There is an Irreconcilable Conflict Between the Two.

ICCTA and the CAA must both be given effect since there is no irreconcilable conflict between the two. Further, ICCTA, a more general statute, should not be considered to displace the CAA, the more specific law governing control of the Terminal’s particulate matter emissions.

i. Two federal statutes must be harmonized absent an irreconcilable conflict.

The Board has repeatedly recognized that ICCTA preemption claims are treated differently when the challenged action is authorized under federal law versus state or local law. In its 2020 opinion on a claimed conflict between ICCTA and the federal Clean Water Act, the STB stated:

[ICCTA’s preemption clause at 49 U.S.C. §] 10501(b) preempts all *state* laws that may reasonably said to have the effect of managing or governing rail transportation

while permitting the continuing application of laws having a more remote effect on rail transportation. . . . In contrast, when other *federal* law (such as the [Clean Water Act]) potentially conflicts with the purposes of § 10501(b), the Board or a court must strive to harmonize the two laws, giving effect to both laws if possible.

Ass’n of Am. R.R. — Petition for Declaratory Ord., FD 36369, 2020 WL 7778233, slip op. at 3, (S.T.B. served Dec. 30, 2020)(emphasis in original)(internal citations omitted); *see also New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal Ry. — Constr., Acquisition and Operation Exemption — In Wilmington & Woburn, MA*, FD 34797, 2007 WL 1989841, slip op. at 2 (S.T.B. served July 10, 2007)(“where there are overlapping Federal statutes, such as the Solid Waste Disposal Act (SWDA) . . . ,the Federal statutes are to be harmonized so that each is given effect where possible.”).

This distinction is grounded in the decisions of the federal courts. The doctrine of preemption arises from the Supremacy Clause, U.S. Const. art. VI, cl 2, which “permits Congress to expressly displace state or local law in any given field.” *Norfolk S. Ry. Co. v. City of Alexandria*, 608 F.3d 150, 156 (4th Cir. 2010) (citing *Worm v. Am. Cyanamid Co.*, 970 F.2d 1301, 1304 (4th Cir. 1992)). The Ninth Circuit has stated that

[p]ursuant to the Supremacy Clause, federal law may preempt state law. Under this doctrine, state laws that interfere with, or are contrary to the laws of Congress made in pursuance of the constitution are invalid. When a federal law conflicts with a state law or local law, the state or local law simply must give way.

Swinomish Indian Tribal Cmty. v. BNSF Ry. Co., 951 F.3d 1142, 1152 (9th Cir. 2020)(internal citations omitted).

This is not the case for a claimed conflict between two federal laws. When two federal laws purportedly contradict one another, the question is whether one federal statute repeals the other. *See e.g., Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018); *Swinomish*, 951 F.3d at 1153 (“When a case involves the interplay between two statutory schemes created by Congress for

different reasons and at different times, we typically ask whether the later statute *repeals* the prior one”(internal citations omitted); *The Last Best Beef, LLC v Dudas*, 506 F.3d 333, 338–39 (4th Cir. 2007).

The Supreme Court has expressed a “‘strong presumption’ that repeals by implication are ‘disfavored,’” and that “[a] party seeking to suggest that two statutes cannot be harmonized, and that one displaces the other, bears the heavy burden of showing ‘a clearly expressed congressional intention’ that such a result should follow.” *Epic Sys. Corp.*, 584 U.S. at 510. Similarly, the Fourth Circuit has said that “when two statutes are capable of co-existence,” we cannot say that one nullifies the other “absent a clearly expressed congressional intent” to that effect. Without such indication, our “duty” is to “regard [both statutes] as effective.” *State v. U.S.*, 7 F.4th 160, 154 (4th Cir. 2021)(citing *Morton v. Mancari*, 417 U.S. 535, 551, (1974).

The needed Congressional intent to repeal an earlier statute with a later one may be found if (1) the two acts are in irreconcilable conflict; or (2) “the later act cover the whole subject of the earlier one and is clearly intended as a substitute.”⁸ *Branch v. Smith*, 538 U.S. 254, 273 (2003); *U.S. v Mitchell*, 39 F.3d 465, 472 (4th Cir. 1994) (citing *Radzanower v. Touce Ross & Co.*, 426 U.S. 148, 154 (1976); accord *The Last Best Beef*, 506 F.3d at 338–39.

ii. Congress did not intend ICCTA to repeal the CAA.

There is no evidence that Congress intended for ICCTA to repeal the CAA and CSX does not argue that ICCTA repeals the CAA. See CSX Petition at 29. Moreover, the Board and the courts have repeatedly recognized that ICCTA does not repeal the CAA. *Joint Petition for Declaratory Ord. — Boston & Me. Corp. and Town of Ayer, MA*, FD 33971, 2001 WL 458685,

⁸ It is clear that ICCTA does not cover the whole subject area of the CAA so SBCLT does not analyze this option.

slip op. at 9 (S.T.B. served May 1, 2001)(“[N]othing in section 10501(b) is intended to interfere with the role of state and local agencies in implementing Federal environmental statutes, such as the Clean Air Act.”); *BNSF Ry. Co., v. Clark Cty.*, 11 F4th 961, 966 (9th Cir. 2021)(“Our principal example of federal laws that should be harmonized with the ICCTA, if possible, is environmental laws.”); *Randolph*, 2024 WL 4347408 at *10 (“It is clear that the ICCTA, although a more recent law, has not repealed the CAA”); *see also U.S. v. St. Mary’s Ry. W., LLC*, 989 F. Supp. 2d 1357, 1361 (S.D. Ga. 2013) (ICCTA does not override the EPA’s jurisdiction to enforce the federal Clean Water Act).

iii. ICCTA, as a general statute, does not nullify the CAA, a more specific one.

A general statute should not be read to displace a more specific one, “regardless of the priority of enactment.” *See, e.g., Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 445 (1987) (emphasis omitted) (quoting *Radzanower.*, 426 U.S. at 153)). In the present case, the CAA is the more specific statute. The CAA requires states to regulate pollution, including particulate matter, from stationary sources, 42 U.S.C. § 7410(a)(2), and the EPA requires MDE to determine the pollution control measures that constitute “reasonable precautions” for the control of particulate matter. COMAR 26.11.06.03(C); 42 U.S.C. § 52.1070. Further, Congress intended to address the potential for a patchwork of inconsistent regulations, which is the core purpose of the ICCTA preemption clause, *Ass’n of Am. R.R. — Petition for Declaratory Ord.*, FD 36369, 2020 WL 7778233, slip op. at 2 (S.T.B. served Dec. 30, 2020), by placing restrictions on state authority to regulate mobile sources under the CAA. *Engine Mfrs. Ass’n*, 88 F.3d at 1079.

B. Permit Condition D is, At Minimum, a Federally Enforceable and Federally Mandated Requirement Issued Under MDE’s Federal Authority

CSX seeks to cast doubt on MDE’s federal authority to add Condition D to the CSX Permit, but its arguments are unavailing.

CSX argues that SIPs may not be fully be federal law. CSX Petition at 32 (citing *In re Volkswagen “Clean Diesel” Mktg., Sales Pracs., & Prods. Liab. Litig.*, 264 F. Supp. 3d 1040, 1047–48 (N.D. Cal. 2017)). This is not the law in the Fourth Circuit, which has been clear that SIPs are federal law. *North Carolina*, 615 F.3d at 299 (“Once a SIP is approved, however, “its requirements become federal law and are fully enforceable in federal court.”); *Mirant Potomac River, LLC v. EPA*, 577 F.3d at 227 (“Upon approval by EPA, the SIP becomes a binding federal regulation.”)

Further, CSX contends that Condition D must be separately approved by EPA in order to have the force and effect of federal law. CSX Petition at 31. This is wrong because permit conditions that derive from the federal CAA are federally enforceable without separate approval by EPA. *See, e.g., Marine Shale Processors*, 81 F.3d at 1356–57 (the relevant question for federally enforceability is “the source of the authority on which the state relied to issue the permit.”); *La. Pacific Corp.*, 909 F. Supp. at 842–43, (permit condition included “pursuant to authority delegated by [EPA]” was federally enforceable.) MDE implemented COMAR 26.11.06.03(C), which was approved by EPA, by adding Condition D to the CSX Permit. This makes Condition D federally enforceable. Finally, even if Condition D were state law, it is still not preempted under ICCTA because it is required under a federal law, the CAA, that is not repealed by ICCTA.

- i. *MDE’s EPA-approved regulation at COMAR 26.11.06.03(C) requires MDE to make facility-specific determinations about pollution control measures at the CSX Terminal.*

COMAR 26.11.06.03(C) requires MDE to make facility-specific determinations regarding the pollution control measures that constitute reasonable precautions for the control of particulate matter from unconfined sources. There is simply no other way of reading the plain

language of the regulation, which states that the precautions shall include certain measures “when appropriate as determined by [MDE]” and that MDE shall consider certain factors “in making this determination.” COMAR 26.11.06.03(C). There is also no other way to make COMAR 26.11.06.03(C) an enforceable limit or other control measure as required by 42 U.S.C. § 7410(a)(1)(2)(A).

EPA has interpreted COMAR 26.11.06.03(C) and similar regulations in other states’ SIPs to require a facility-specific determination by the permitting agency. EPA, when approving COMAR 26.11.06.03(C), stated that it “requires these sources to take reasonable precautions, approved by [MDE], to prevent particulate matter from becoming airborne.” 68 Fed. Reg. at 46487–88. When considering a similar requirement in Alabama’s SIP, EPA ordered the Alabama Department of Environmental Management (“ADEM”) to revise a major source operating permit to “include in the permit the specific reasonable precautions that are required to prevent fugitive dust from the” permitted coal plant. *Matter of Ala. Power Co., Barry Generating Plant*, EPA Order, at 17 (June 14, 2022), at https://www.epa.gov/system/files/documents/2022-06/APC%20Barry%20Order_6-14-22.pdf (hereinafter “EPA Plant Barry Order”).⁹ Similarly, EPA instructed the Georgia Environmental Protection Division (“EPD”) to revise the major

⁹ EPA’s order also notes that ADEM interpreted the reasonable precautions rule to require facility-specific implementation, stating

ADEM, in its [Response to Comments] stated [that] ‘ADEM has for many years interpreted its fugitive dust regulations to require development and implementation of fugitive dust control plans only for those facilities for which ADEM determines that there is a need for fugitive dust mitigation. ADEM’s records show no finding of fugitive dust issues at Plant Barry, so there is no need to include fugitive dust provisos in the Permit at this time. ADEM has clear authority to require the facility to develop and implement a fugitive dust control plan at any time necessary in the future.’

EPA Plant Barry Order at 16.

source operating permits for five Georgia power plants to identify the specific limitations and standards used to meet the “reasonable precautions” requirement for the control of fugitive particulate matter in Georgia’s SIP. *In the Matter of Scherer Steam-Electric Generating Plant Juliette, et. al.*, EPA Order pp. 18–19 (April 14, 2014), available at https://www.epa.gov/sites/default/files/2015-08/documents/ga_power_plants_response2012.pdf; (hereinafter “EPA Scherer Order”).

Thus, MDE’s SIP required it to make a facility-specific decision regarding the pollution control measures that constitute reasonable precautions for the control of particulate matter from unconfined sources at the CSX Terminal.

ii. *Separate EPA approval is not needed to make Condition D federally enforceable.*

CSX maintains that Condition D does not have the force of federal law because it has not been approved by EPA into Maryland’s SIP. CSX Petition at 31. This is incorrect. MDE was required to issue Condition D in order to implement COMAR 26.11.06.03(C), which is in Maryland’s SIP. *See Marine Shale Processors*, 81 F.3d at 1356–57 (the relevant question for federally enforceability is “the source of the authority on which the state relied to issue the permit.”)¹⁰ In addition, EPA has approved MDE’s regulations for the minor source operating permit program into Maryland’s SIP. 40 C.F.R. § 52.1070(c); EPA, Approval and Promulgation of Air Quality Implementation Plans; Maryland; Revisions to Regulations for Permits, Approvals and Registration and Related Regulations, 68 Fed. Reg. 9012 (Feb. 27, 2003).

¹⁰ CSX also claims that “other Maryland source-specific requirements from MDE permits and orders *are* incorporated into the SIP by the EPA” CSX Petition at 31, citing to a web hyperlink that no longer works. Presumably CSX is referencing the source-specific requirements approved in Maryland’s SIP by EPA at 40 C.F.R. § 52.1070(d). None of these source-specific requirements is identified as deriving from a permit; all are identified as deriving from enforcement, departmental, or secretarial orders. 40 C.F.R. § 52.1070(d).

In *La. Pacific Corp.* the court considered whether permit requirements to operate and report data from a continuous opacity monitoring system (COMS) at a pollution source were federally enforceable when the requirements were not in the SIP but were issued under an EPA-approved operating permit program. 909 F. Supp. at 842–43. The defendant in the case argued that the COMS monitoring and reporting requirements were enforceable only at the state level because they were not part of the SIP. *Id.* at 843. The court disagreed, finding that, because SIPs must include monitoring requirements, the COMS monitoring requirement set forth in the permit was “required by federal law.” *Id.* The court further explained that “the COMS monitoring and reporting requirements were included in the . . . permit pursuant to authority delegated by the [EPA] to Colorado in its SIP and are federally enforceable.” *Id.* The court was also persuaded by the fact that the COMS monitoring and reporting requirements were set forth in an operating permit and that permit program that was approved by EPA into Colorado’s SIP. *Id.* at 842.

Similarly, in order to implement Maryland’s SIP, MDE must determine the pollution control measures that constitute reasonable precautions for the control of particulate matter at the unconfined sources located at the CSX Terminal. 42 U.S.C. § 7410(a)(2)(A)(SIPs must include “enforceable emission limitations and other control measures, means, or techniques . . . , as well as schedules and timetables for compliance.”); *see* EPA Plant Barry Order; EPA Scherer Order. MDE implemented COMAR 26.11.06.03(C), which is part of the SIP, by adding Condition D to the CSX Permit. Therefore, Condition D is federally enforceable. *See* 42 U.S.C. §§ 7604(f)(4), 7413; 40 C.F.R. §§ 52.23, 70.6(b)(2), 51.301. Moreover, MDE included Condition D in a minor source operating program that was previously approved by EPA, which also makes Condition D federally enforceable. *See La. Pacific Corp.*, 909 F. Supp. at 842–43.

CSX cites *Randolph* for the principle that “only state regulations and requirements specifically incorporated into the SIP have the force and effect of federal law.” CSX Petition at 31. But the court, in *Randolph*, did not hold this and declined to make a decision in the case until after EPA decided whether to approve the California regulations at issue. *Randolph*, 2024 WL 4347408 at *13–14. Further, in *Randolph*, California had issued regulations governing locomotives and submitted those rules to EPA for required approval but EPA had not yet approved the regulations. *Id.* at *3–4. In the present case, EPA issued the necessary approval in 2003, over twenty years before MDE took the challenged action. 68 Fed. Reg. at 46487–88.

CSX cites *Dep’t of Fin. v. Comm’n on State Mandates*, 378 P.3d 356, 370 (Cal. 2016), *as modified on denial of reh’g* (Nov. 16, 2016) for the principle that inclusion in a state permitting decision does not automatically make a permit condition federal law. In that case, the California Supreme Court found that requirements in a Clean Water Act permit need not be treated as federal law because the permitting agency had discretion regarding the conditions to impose. *Id.* However, the court was not considering how two federal statutes interact. Instead, the court considered whether the permit requirements constituted federal law for purposes of absolving the state of its duty, under a California statute, to reimburse local governments charged with implementing the requirements. *Id.* at 754-55. The court reached its decision by interpreting the California statute, which the court stated was prompted by concerns over the state transferring costs to local agencies, *id.* at 366, and state case law interpreting that statute. Among the permit requirements at issue were site inspection requirements that were previously the state’s duty, and the state “shifted that responsibility to the [local governments] by imposing the[] [p]ermit conditions.” *Id.* at 771.

This is a highly distinguishable set of facts from the present matter involving CSX. There is no state statute at issue here. The CAA, EPA's implementing regulations, and court decisions interpreting those laws provide the necessary context for determining whether Condition D in CSX's Permit is federally enforceable. Under these laws, Condition D is federally enforceable. *See, e.g., E. Ky. Power Coop.*, 498 F. Supp. 2d at 1006–07; *La. Pacific Corp.*, 909 F. Supp. at 842–43.

iii. *Even if Condition D were a state law, it would be not be preempted by ICCTA.*

Even if CSX were correct, which it is not, that Condition D has only the force of state law, this is not dispositive. Federal courts have found that state laws, even those directly regulating railroad tracks and rail shipments, are not preempted by ICCTA if authorized under a different federal statute that is not repealed by ICCTA.

In *Tyrrell v. Norfolk S. Ry. Co.*, 248 F.3d 517, 520, 524–25 (6th Cir. 2001), the Sixth Circuit found that an Ohio regulation requiring at least “14 feet of clearance between the centers of adjacent and parallel” railroad tracks was not preempted by ICCTA. The court considered the relationship between ICCTA and the Federal Railroad Safety Act (“FRSA”) of 1970 as amended, 49 U.S.C. § 20101 *et. seq.*, which provides the Federal Railroad Administration (“FRA”) with authority over rail safety issues. *Id.* at 521. Recognizing that repeals of federal laws by implication are disfavored and finding “no positive repugnancy between FRSA and the ICCTA's jurisdictional provisions[,]” the court determined that “ICCTA and its legislative history contain no evidence that Congress intended for the [Board] to supplant the FRA's authority over rail safety.” *Id.* at 523.

In giving continued effect to the Ohio track clearance regulation, the court relied on FRSA's “saving” clause, which states that “[a] state may adopt or continue in force a law,

regulation, or order related to railroad safety until the Secretary of Transportation prescribes a regulation or issues an order covering the subject matter of the state requirement.” 49 U.S.C. § 2016; *Tyrrell*, 248 F.3d at 521. In light of the relationship between ICCTA and FRSA and of FRSA’s saving clause, the Sixth Circuit reversed a lower court decision that the Ohio track clearance requirement was preempted by ICCTA, stating that the district court’s “interpretation of the ICCTA implicitly repeals FRSA’s saving clause.” *Id.* at 522–23.

In addition, the Board urged the Sixth Circuit to take this position in an *amicus curiae* brief, stating that the district court erroneously based its holding on cases that did not involve “the interplay of two complementary Federal statutory schemes such as ICCTA and FRSA.” Brief of Board as Amicus Curiae in Support of Appellant, *Tyrrell v. Norfolk S. Ry. Co.*, 2000 WL 35595210 at *14 (March 27, 2000). The Board also noted that “[t]he Board's principal function is economic regulation. [While there was a public safety aspect to the Board’s jurisdiction], FRA had (and continues to have) primary separate and complementary authority to promote railroad safety under FRSA.” *Id.* at *5.

Similarly, the Ninth Circuit found that a California law imposing a fee on certain railroad shipments of hazardous materials would not be preempted by ICCTA so long as it satisfied the requirements of a different federal statute, the federal Hazardous Materials Transportation Act (“HTMA”). *BNSF Ry. Co. v. Cal. Dep’t of Tax and Fee Admin.*, 904 F.3d 755, 776. (9th Cir. 2018). The court reasoned that the HTMA, which states that “a State . . . may impose a fee related to transporting hazardous materials only if the fee is fair” and used for certain purposes, 49 U.S.C. § 5125(f)(1), should not be considered preempted by ICCTA and that a state law that is fair and meets the other requirements of HTMA is not preempted by ICCTA. *Id.* at 765–66. (“There is nothing in the text of the ICCTA, or in its legislative history, to indicate that Congress

intended to restrict or overrule the protection from preemption provided by [42 U.S.C. § 5125.”) The court, in the final step of its analysis, found the fee imposed by California failed to satisfy HMTA’s “fairness” requirement and, therefore, was preempted by ICCTA. *Id.* at 768.

In both of these cases, a state law was not preempted by ICCTA if it was allowed under a federal statute that was not repealed by ICCTA. The CAA not only allows but *mandates* that MDE determine the control measures that constitute reasonable precautions for the control of particulate matter at the CSX Terminal’s unconfined sources. *See* 42 U.S.C. § 7410(a)(1) (requiring SIPs for attainment and maintenance of national ambient air quality standards); 68 Fed. Reg. at 46487–88 (EPA interpreting COMAR 26.110.06.03(C) to require “sources to take reasonable precautions, approved by [MDE], to prevent particulate matter from becoming airborne.”); EPA Plant Barry Order at 17; EPA Scherer Order at 18–19. Therefore, even if Permit Condition D were state law only, it is not preempted by ICCTA. *See BNSF*, 904 F.3d at 765–66; *Tyrell*, 248 F.3d at 524–25.

C. Condition D Can Be Harmonized with the Board’s Authority Under ICCTA.

There is no conflict between ICCTA and regulation under the CAA of stationary sources, including stationary sources owned by rail carriers. Where courts have found that ICCTA may preempt federal environmental laws, it has been in the context of regulation of locomotives, which are capable of moving from state to state. *See Randolph*, 2024 WL 4347408 at *11 (possible conflict between ICCTA and California’s regulation that “while aimed at regulating locomotive emissions, touches on numerous other aspects of railroad operation and management”). However, Congress intended for states to have greater regulatory power over stationary sources than over mobile sources under the CAA. *Engine Mfrs. Ass’n*, 88 F.3d at 1079.

The Board has stated that the paramount purpose for ICCTA’s preemption clause is to prevent the difficulty posed by having to meet inconsistent state regulations. *Ass’n of Am. R.R. — Petition for Declaratory Ord.*, FD 36369, 2020 WL 7778233, slip op. at 2 (S.T.B. served Dec. 30, 2020)(“The Board and the courts have stated that the core purpose of [ICCTA’s preemption section] is to ensure the free flow of interstate commerce, particularly by preventing a patchwork of differing regulations across states.”); *EPA — Petition for Declaratory Ord.*, FD 35803, 2014 WL 7392860, slip op. at 8–9 (S.T.B. served Dec. 29, 2014)(California locomotive idling restrictions likely preempted by ICCTA even if approved by EPA “because of the potential patchwork of regulations that could result, contravening Congress’s purpose in enacting [ICCTA’s preemption provision at 42 U.S.C.] § 10501(b).”).

A stationary source, like the CSX Terminal, cannot move from state to state. There is no risk here that a second state could attempt to impose a different requirement restricting particulate matter from unconfined sources at the Terminal.

The Board recognized the distinction between stationary and mobile source regulation in a 2020 advisory opinion in a matter involving the federal Clean Water Act (“CWA”), stating:

The Board does not suggest that every requirement under the CWA that may differ from state to state would be preempted as applied to railroads. However, rail cars in transit are inherently instrumentalities of interstate commerce; as such, subjecting them to differing regulatory requirements as they pass from one state to the next is likely to be incompatible with the free flow of interstate commerce that Congress envisioned when enacting § 10501(b). In contrast, other applications of the CWA, such as non-discriminatory application to discharges from certain types of stationary facilities owned or operated by railroads . . . are generally not preempted because, although they may differ from state to state, they do not typically conflict with § 10501(b)’s goal of preventing differing regulations from interfering with the free flow of interstate commerce.

Ass’n of Am. R.R. — Petition for Declaratory Ord., FD 36369, 2020 WL 7778233, slip op. at 15 (S.T.B. served Dec. 30, 2020).

To the extent CSX argues that rail traffic will be affected by the Windscreen Requirement, this position ignores that Condition D requires openings in the windscreen “to allow vehicular access into and out of the interior of the structure or where necessary to allow for the movement of coal into or out of the structure via conveyors or rail.” CSX Petition Ex. 2 at 9; see Section VI below.

Therefore, MDE’s duty under the CAA to regulate particulate matter emissions from the unconfined sources at the Terminal can easily be given effect alongside the Board’s jurisdiction under ICCTA

V. MDE Did Not Discriminate Against a Rail Carrier By Adding Condition D to the CSX Permit.

CSX appears to acknowledge that, if Permit Condition D is federal law, whether MDE discriminated against a rail carrier is not properly part of the preemption analysis. *See* CSX Petition at 33–34 (arguing the test for ICCTA preemption of a federal law focuses on unreasonable burden of rail activity). This is correct. The test for whether ICCTA preempts a state or local law is whether the law (1) discriminates against a rail carrier; or (2) unreasonably burdens rail carriage. *See, e.g., Norfolk S.*, 608 F.3d at 160. It would not be appropriate to apply the same test when considering whether another federal law is displaced by ICCTA as such an analysis does not demonstrate an attempt to harmonize the two federal laws. *See Epic Sys. Corp.*, 584 U.S. at 510.

Nevertheless, CSX has failed to show that MDE discriminated against a rail carrier by adding Condition D to CSX’s Permit. The EPA-approved standard at COMAR 26.11.06.03(C) requires a facility-specific, case-by-case determination based on the facts at each site. EPA has characterized it this way, *see* EPA Scherer Order at 18–19, and another state agency, the Alabama Department of Environmental Management (“ADEM”) has said that it interprets it this way. *See*

EPA Plant Barry Order at 16 (“ADEM has for many years interpreted its fugitive dust regulations to require development and implementation of fugitive dust control plans only for those facilities for which ADEM determines there is a need for fugitive dust mitigation.”) The CSX Terminal is located much closer to a residential area than Maryland’s other coal terminal, the Consol Terminal, *see* Section II.A *supra*, and has likely been the source of more complaints. In addition, the Consol Terminal’s permit subjects it to more extensive reporting requirements than the CSX Permit. *See* Ex. 1 at 9–10 (requiring, *inter alia*, reporting of monthly coal loaded each month and a log of the coal pile wet suppression system operating including records of time and duration of use and use of surfactant and/or crusting agents).¹¹

Further, there are other examples of MDE imposing facility-specific pollution control requirements in Maryland. As stated in the Legal Background section, MDE requires a Best Management Practices Plan for control of fugitive particulate from the coal handling system at the Mettiki coal preparation plant. Ex. 6. at 42. CSX is not required to maintain such a plan. *See* CSX Ex. 2. And MDE has imposed unique requirements for a particular source in a different industry in the past. In 2018, MDE finalized regulations requiring Wheelabrator, Inc., the owner of one of two large waste incinerators in Maryland, to perform a detailed control technology analysis regarding feasible controls for emissions of nitrogen oxides (“NOx”). COMAR 26.11.08.10(E). MDE did not require this analysis for the state’s other large trash incinerator, the Montgomery County Resource Recovery Facility. *See* COMAR 26.11.08.10.

CSX points to statements made by MDE about CSX’s Permit being stronger but fails to identify to what MDE was comparing the CSX Permit. CSX Petition at 4, 14, 26–29. With full

¹¹ CSX’s Fugitive Dust Control Plan identifies records that CSX keeps relating to the wet suppression system but does not *require* (using the word “shall” or “must”) CSX to do so. CSX Petition Ex. 2 at 28.

context, it is clear that MDE was comparing the July 29, 2025 version of the CSX Permit to earlier versions of the same permit. CSX Petition at 28 (“This is the most protective permit **ever issued for this site.**”) The notion that MDE was characterizing the CSX Permit as “one of the most stringent in state history” compared to other facilities, *see* CSX Petition at 26, is laughable. Even with the addition of Condition D, the CSX Permit is weak in comparison to other Maryland facility air permits. The conditions in the CSX Permit include not one monitoring requirement tied to an enforceable pollution standard or one pollution limit expressed as a number, which are the easiest standards to measure compliance with. *See* CSX Petition Ex. 2; *compare* Ex. 7 (Aggregate Industries, Inc. Permit to Operate No. 033-0934 at 5 (12% opacity limit for the crusher, 7% opacity limit for all other fugitive sources)).

VI. CSX Has Not Demonstrated that Condition D Unreasonably Burdens Rail Transportation.

CSX argues that, even if Condition D were federal law, it is still preempted because it unreasonably burdens rail transportation. CSX Petition at 34. However, CSX has not demonstrated that Condition D will unreasonably burden the activities of the trains that serve the facility as opposed to other operations at the Terminal. *See id.* at 21–26.

CSX essentially claims that the installation of the windscreen will cause backups of trains carrying coal. *See* Petition at 21–23. In its argument, CSX does not cite any cases in which the courts or the Board discuss the application of a federal law to a stationary source, however. CSX claims that rail operations will be temporarily affected during the construction of the windscreen but does not cite law supporting the argument that temporary effects caused by the application of a federal law to a stationary source are unreasonable. *Id.* at 22.

Condition D requires that the windscreen include openings “where needed to allow vehicular access into and out of the interior structure or where necessary to allow for the

movement of coal into or out of the structure via conveyors or rail.” CSX Petition Ex. 2 at 9. CSX claims that this improperly allows MDE discretion to determine where these openings are necessary, CSX Petition at 19, but this is not a reasonable interpretation. The CSX Terminal is in a fixed configuration and the location of these openings, especially for rail, is already determined by their existing location. The requirement to include these openings in the windscreen also appears to belie CSX’s claim that it cannot build the windscreen without “disrupting or relocating” the tracks. *See* CSX Petition at 23.

CSX also claims that the windscreen will indirectly impose restrictions on the height of the coal piles. CSX Petition at 23–24. As an initial matter, this ignores that MDE has not imposed a specific height restriction on the windscreen or coal piles and, instead, requires that the windscreen must be higher than the coal piles. CSX Petition, Ex. 2 at 9. CSX claims multiple times in the Petition that the windscreen must be 100 feet tall, CSX Petition at 1, 8, 16, but this is not in the Permit. CSX also does not demonstrate that such an effect constitutes an unreasonable burden on rail transportation. *See Adrian v. Blissfield*, 550 F.3d 533, 541 (6th Cir. 2008)(“The fact that the [law] may prevent the Railroad from maximizing its profits, however, does not render [it] unreasonably burdensome.”)

CSX further posits a scenario where an emergency beyond its control prevents it from loading the coal onto ships but its customers want it to continue delivering coal to the Terminal so CSX must increase the coal piles to ever greater heights, exceeding the windscreen height, or store the coal in trains onsite. CSX Petition at 25–26. CSX does not cite a case in which an agency has been prohibited from exercising federal regulatory authority over a pollution source under normal circumstances because of the possibility of an emergency situation. *Id.* Moreover, Maryland’s environmental enforcement laws already account for catastrophes beyond a

permittee's control. *See* Md. Code, Environment, § 2-613 ("A condition that is caused by . . . a catastrophe, or a cause over which an alleged violator has no control is not a violation of this title or any standard set or rule or regulation adopted under this title.")

Thus, CSX has not demonstrated that Condition D will unreasonably burden rail activities or that the appropriate outcome is ICCTA's displacement of another federal law.

VII. Conclusion

CSX seeks to expand the scope of ICCTA preemption in a way that is both unprecedented and unsupported by the arguments in CSX's Petition. For the foregoing reasons, the Board should deny CSX's Petition.

Dated: January 30, 2026

Respectfully submitted,

/s/ Leah Kelly
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Maryland Bar Client Protection Fund ID.
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*Attorney for South Baltimore Community
Land Trust, Inc.*

Certificate of Service

I certify that on January 30, 2026, I caused to be served a copy of the foregoing
Reply upon all parties of record in this proceeding by email.

/s/ Leah Kelly

Dated: January 30, 2026

TABLE OF EXHIBITS
TO THE REPLY OF SOUTH BALTIMORE COMMUNITY LAND TRUST, INC.
CSX Transportation, Inc. – Petition for Declaratory Order
Finance Docket No. 36886

Exhibit Number	Document
Exhibit 1	Consol Marine Terminals, LLC Permit-to-Operate, Permit No. 510-2310
Exhibit 2	GHD Services, Inc., Curtis Bay Piers Coal Facility Explosion Investigation, Cause and Origin Evaluation, CSX Transportation, July 29, 2022
Exhibit 3	Maryland Department of the Environment July 20, 2022 Notice of Violation to CSX Transportation, Inc.
Exhibit 4	U.S. Occupational Safety and Health Administration, June 29, 2022 Citation and Notification of Penalty to CSX Transportation, Inc.
Exhibit 5	Maryland Department of the Environment Sept. 9, 2024 Notice of Violation to CSX Transportation, Inc.
Exhibit 6	Mettiki Coal, LLC Part 70 Operating Permit No. 24-023-0042
Exhibit 7	Aggregate Industries at Sheriff Road Permit-to-Operate, Premises No. 033-0934

EXHIBIT 1

Consol Marine Terminals, LLC Permit-to-Operate
Permit No. 510-2310



Maryland
Department of
the Environment

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor

Horacio Tablada, Secretary
Suzanne E. Dorsey, Deputy Secretary

Mr. Duane Cephus, Manager
Consol Marine Terminals, LLC.
3800 Newgate Avenue
Baltimore, MD 21224

JUN 01 2022

Dear Mr. Cephus:

Enclosed, please find the renewed State Permit to Operate for your Coal Transshipment Terminal located at 3800 Newgate Avenue in Baltimore, MD. The Permit will expire on April 30, 2027. The Permit contains both general conditions, which apply to all Permit-to-Operate holders in Maryland, and specific conditions, which apply to your facility's particular operations.

Please be reminded that an emissions-based fee must be paid annually and is due by the anniversary date of the permit. The Department will bill you prior to the anniversary date for the annual fee.

If you have any questions regarding the issuance of this permit or the annual fee, please contact Mr. George Ikhinmwin at (410) 537-3246.

Sincerely,

A handwritten signature in black ink, appearing to read "Suna Yi Sariscak".

Suna Yi Sariscak, Manager
Air Quality Permits Program
Air & Radiation Administration

SYS/jm

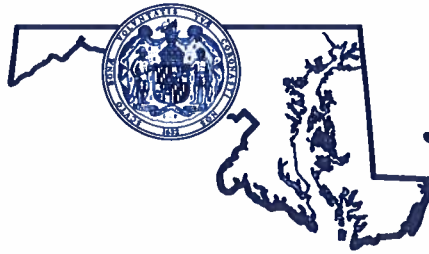
Enclosure

KEEP PERMIT AT SITE

CONTROL NO. B - 06997

Larry Hogan
Governor

State of



Maryland
Horacio Tablada
Secretary

DEPARTMENT OF THE ENVIRONMENT

Air and Radiation Administration
1800 Washington Boulevard, Suite 720
Baltimore, MD 21230

☐ Construction Permit

☒ Operating Permit

PERMIT NO. 510-2310

DATE ISSUED June 1, 2022

PERMIT FEE To be Paid in Accordance
with COMAR 26.11.02.19B

EXPIRATION
DATE April 30, 2027

LEGAL OWNER & ADDRESS

Consol Marine Terminals, LLC
3800 Newgate Ave.
Baltimore, MD 21224
Attn: Mr. Duane Cephus, Manager

SITE

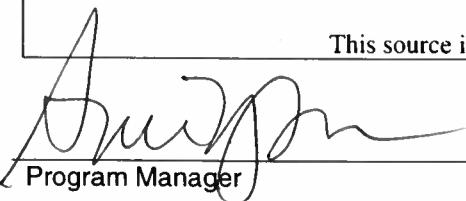
Consol Marine Terminals, LLC
3800 Newgate Ave.
Baltimore, MD 21224
Premises # 510-2310
AI #10636

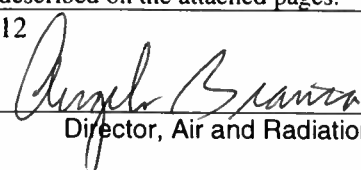
SOURCE DESCRIPTION

Coal Transshipment Terminal.

This source is subject to the conditions described on the attached pages.

Page 1 of 12


Program Manager


Director, Air and Radiation Administration

CONSOL MARINE TERMINALS, LLC.
3800 NEWGATE AVENUE
BALTIMORE, MARYLAND 21224
PERMIT-TO-OPERATE NO. 510-2310

INDEX

Part A – General Provisions
Part B – Applicable Regulations
Part C – Operating Conditions
Part D – Record Keeping and Reporting Requirements

This Permit-to-Operate incorporates requirements for the following registered installations:

ARA Registration Number	Description	Date of Installation
510-2310-9-0326	Coal Transshipment Terminal including general belt conveyors, unloaders, stackers, and other various coal handling equipment equipped with a wet suppression system for particulate emissions control.	1983 / 2011
510-2310-6-2004	One (1) 150 tons per hour coal screen equipped with a wet suppression system and powered by a 50-horsepower diesel engine.	December 2012

PART A - GENERAL PROVISIONS

- (1) The Application for Permit to Operate Process Equipment (Form AMA-26) received at the Department on February 15, 2022, for the renewal of the Permittee's permit-to-operate is incorporated into this permit by reference. If there are any conflicts between representations in the application and representations in this permit, the representations in the permit shall govern. Estimates of dimensions, volumes, emissions rates, operating rates, feed rates and hours of operation included in the application for renewal do not constitute enforceable numeric limits beyond the extent necessary for compliance with applicable requirements.
- (2) Upon presentation of credentials, representatives of the Maryland Department of the Environment ("MDE" or the "Department") and the Baltimore City Health Department shall at any reasonable time be granted, without delay and without prior notification, access to the Permittee's property and permitted to:
 - (a) Inspect any construction authorized by this permit;
 - (b) Sample, as necessary to determine compliance with requirements of this permit, any materials stored or processed on-site, any waste materials, and any discharge into the environment;

CONSOL MARINE TERMINALS, LLC.
3800 NEWGATE AVENUE
BALTIMORE, MARYLAND 21224
PERMIT-TO-OPERATE NO. 510-2310

- (c) Inspect any monitoring equipment required by this permit;
 - (d) Review and copy any records, including all documents required to be maintained by this permit, relevant to a determination of compliance with requirements of this permit; and
 - (e) Obtain any photographic documentation or evidence necessary to determine compliance with the requirements of this permit.
- (3) If any provision of this permit is declared by proper authority to be invalid, the remaining provisions of the permit shall remain in effect.
- (4) Nothing in this permit authorizes the violation of any rule or regulation or the creation of a nuisance or air pollution.

PART B – APPLICABLE REGULATIONS

- (1) This source is subject to all applicable local and federal air pollution control requirements including, but not limited to, the following regulations:

Conditions (a) and (b) apply only to the 50 HP engine associated with ARA Registration No. 510-2310-6-2004.

- (a) All applicable terms, provisions, emissions standards, testing, monitoring, record keeping, and reporting requirements included in federal New Source Performance Standards (NSPS) promulgated under 40 CFR 60, Subparts A and IIII for Stationary Compression Ignition Internal Combustion Engines.
- (b) All applicable terms, provisions, emissions standards, testing, monitoring, record keeping, and reporting requirements included in National Emissions Standards for Hazardous Air Pollutants (NESHAP) promulgated under 40 CFR 63, Subparts A (General Provisions) and ZZZZ (Stationary Reciprocating Internal Combustion Engines).

Note: The Permittee must meet the requirements of 40 CFR, Part 63, Subpart ZZZZ by meeting the requirements of 40 CFR, Part 60, Subpart IIII for the emergency generator. No further requirements apply to the emergency generator under 40 CFR, Part 63, Subpart ZZZZ. [Ref.: 40 CFR §63.6590(c)(1)]

- (2) This source is subject to all applicable federally enforceable State air pollution control requirements including, but not limited to, the following regulations:

**CONSOL MARINE TERMINALS, LLC.
3800 NEWGATE AVENUE
BALTIMORE, MARYLAND 21224
PERMIT-TO-OPERATE NO. 510-2310**

- (a) **COMAR 26.11.01.04A(1) - Requirements for Testing.**
“The Department may require any person to conduct or have conducted testing to determine compliance with this subtitle. The Department, at its option, may witness or conduct these tests. This testing will be done at a reasonable time, and all information gathered during a testing operation will be provided to both parties.”
- (b) **COMAR 26.11.01.07C - Report of Excess Emissions.**
(1) “In the case of any occurrence of excess emissions, expected to last or actually lasting for 1 hour or more, from any installation required by COMAR 26.11.02.13 to obtain a State permit to operate, the owner or operator shall report the onset and shall report the termination of the occurrence to the Department by telephone.”
(2) “Telephone reports of excess emissions shall include the following information:
a. The identity of the installation and the person reporting;
b. The nature or characteristics of the emissions (for example, hydrocarbons, fluorides);
c. The time of occurrence of the onset of the excess emissions and the actual or expected duration of the occurrence; and
d. The actual or probable cause of the excess emissions.”
- (c) **COMAR 26.11.02.09A - Sources Subject to Permits to Construct and Approvals.**
“A person may not construct or modify or cause to be constructed or modified any of the following sources without first obtaining, and having in current effect, the specified permits to construct and approvals: (6) All sources, including installations and air pollution control equipment, except as listed in Regulation .10 of this chapter—permit to construct required.”
- (d) **COMAR 26.11.06.02C(2) - Visible Emission Standards.**
“In Areas III and IV a person may not cause or permit the discharge of emissions from any installation or building, other than water in an uncombined form, which is visible to human observers.”

Exceptions - COMAR 26.11.06.02A(2).

“The visible emissions standards in §C of this regulation do not apply to emissions during start-up and process modifications or adjustments, or occasional cleaning of control equipment, if:

- (a) The visible emissions are not greater than 40 percent opacity; and
(b) The visible emissions do not occur for more than 6 consecutive minutes in any 60-minute period.”

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3800 NEWGATE AVENUE
BALTIMORE, MARYLAND 21224
PERMIT-TO-OPERATE NO. 510-2310

- (e) **COMAR 26.11.06.03B(2)(a) - Particulate Matter from Confined Sources.**
“A person may not cause or permit to be discharged into the outdoor atmosphere from any other installation, particulate matter in excess of 0.03 gr/SCFD (68.7 mg/dscm).”
- (f) **COMAR 26.11.06.03C - Particulate Matter from Unconfined Sources.**
“A person may not cause or permit emissions from an unconfined source without taking reasonable precautions to prevent particulate matter from becoming airborne. These reasonable precautions shall include, when appropriate as determined by the Department, the installation and use of hoods, fans, and dust collectors to enclose, capture, and vent emissions. In making this determination, the Department shall consider technological feasibility, practicality, economic impact, and the environmental consequences of the decision.”
- (g) **COMAR 26.11.06.03D - Particulate Matter from Materials Handling and Construction.**
“A person may not cause or permit any material to be handled, transported, or stored, or a building, its appurtenances, or a road to be used, constructed, altered, repaired, or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne. These reasonable precautions shall include, but not be limited to, the following when appropriate as determined by the control officer:
- (1) Use of water or chemicals for control of dust in the demolition of existing buildings or structures, construction operations, the grading of roads, or the clearing of land.
 - (2) Application of asphalt, oil, water, or suitable chemicals on dirt roads, materials stockpiles, and other surfaces which can create airborne dusts.
 - (3) Installation and use of hoods, fans, and dust collectors to enclose and vent the handling of dusty materials. Adequate containment methods shall be employed during sandblasting of buildings or other similar operations.
 - (4) Covering, at all times when in motion, open-bodied vehicles transporting materials likely to create air pollution. Alternate means may be employed to achieve the same results as would covering the vehicles.
 - (5) The paving of roadways and their maintenance in clean condition.
 - (6) The prompt removal from paved streets of earth or other material which has been transported there by trucks or earth moving equipment or erosion by water.”

**Conditions (h) and (i) apply only to the 50 HP engine associated with ARA
Registration No. 510-2310-6-2004.**

CONSOL MARINE TERMINALS, LLC.
3800 NEWGATE AVENUE
BALTIMORE, MARYLAND 21224
PERMIT-TO-OPERATE NO. 510-2310

- (h) **COMAR 26.11.09.05E - Stationary Internal Combustion Engine Powered Equipment.**
(1) N/A
Emissions During Idle Mode.
“A person may not cause or permit the discharge of emissions from any engine, operating at idle, greater than 10 percent opacity.”
- (2) **Emissions During Operating Mode.**
“A person may not cause or permit the discharge of emissions from any engine, operating at other than idle conditions, greater than 40 percent opacity.”
- (3) **Exceptions.**
(a) “Section E(2) of this regulation does not apply for a period of 2 consecutive minutes after a period of idling of 15 consecutive minutes for the purpose of clearing the exhaust system.
(b) Section E(2) of this regulation does not apply to emissions resulting directly from cold engine start-up and warm-up for the following maximum periods:
(i) Engines that are idled continuously when not in service: 30 minutes;
(ii) All other engines: 15 minutes.
(c) Section E(2) and (3) of this regulation do not apply while maintenance, repair, or testing is being performed by qualified mechanics.”
- (i) **COMAR 26.11.09.07A(2) - Sulfur Content Limitations for Fuel.**
“A person may not burn, sell, or make available for sale any fuel with a sulfur content by weight in excess of or which otherwise exceeds the following limitations: (2) In Areas III and IV: (b) Distillate fuel oils, 0.3 percent.”
- (3) This source is subject to all applicable State-only enforceable air pollution control requirements including, but not limited to, the following regulations:
- (a) **COMAR 26.11.02.13A (16 and 38) - Sources Subject to State Permits to Operate.**
“Except for a source that is covered by a Part 70 permit, a person may not operate or cause to be operated any of the following sources without first obtaining, and having in current effect, a State permit to operate as required by this regulation: **(16)** - Crushers, hammermills, shredders, grinders, classifying screens of 5 tons (4540 kilograms) or more per hour throughput and **(38)** - Coal or ore export loading or unloading installations.”

**CONSOL MARINE TERMINALS, LLC.
3800 NEWGATE AVENUE
BALTIMORE, MARYLAND 21224
PERMIT-TO-OPERATE NO. 510-2310**

- (b) **COMAR 26.11.02.14D - Procedures for Obtaining State Permits to Operate and Permits to Construct Certain Sources and Permits to Construct Control Equipment on Existing Sources.**

“A complete application for the renewal of a State permit to operate shall be submitted not later than 60 days before the expiration date in a State permit to operate. If a timely application for a renewal has been submitted, the current State permit to operate remains in effect until the Department makes a final decision to issue or deny the permit.”

- (c) **COMAR 26.11.02.19C - Information Required to be Maintained by a Source.**

- (1) “Beginning January 1, 1994, the owner or operator of a source for which a permit to operate is required shall maintain records necessary to support the emission certification, including the following information:
- (a) The total amount of actual emissions of each regulated pollutant and the total of all regulated pollutants;
 - (b) An explanation of the methods used to quantify the emissions and the operating schedules and production data that were used to determine emissions, including significant assumptions made;
 - (c) Amounts, types, and analyses of all fuels used;
 - (d) Emission data from continuous emission monitors that are required by this subtitle or EPA regulations, including monitor calibration and malfunction information;
 - (e) Identification, description, and use records of all air pollution control equipment and compliance monitoring equipment, including significant maintenance performed, malfunctions and downtime, and episodes of reduced efficiency of this equipment;
 - (f) Limitations on source operation or any work practice standards that significantly affect emissions; and
 - (g) Other relevant information as required by the Department.

- (2) The logs and other records of information required by §C(1) of this regulation shall be retained for a period of 5 years and made available to the Department upon request.

- (3) If the owner or operator of a source for which a permit to operate is required fails to maintain or provide the data required by this section, which the Department requests in order to verify the emissions during the previous calendar year, the annual emission-based fee for that source shall be based on the estimated allowable emissions, as defined in COMAR 26.11.01.01B(4), of that source, as determined by the Department.”

- (d) **COMAR 26.11.02.19D - Emission Certification.**

- (1) “Beginning January 1, 1994, the responsible official designated by the owner or operator of a source for which a permit to operate is required shall certify,

**CONSOL MARINE TERMINALS, LLC.
3800 NEWGATE AVENUE
BALTIMORE, MARYLAND 21224
PERMIT-TO-OPERATE NO. 510-2310**

as provided at Regulation .02F of this chapter, the actual emissions of regulated air pollutants from all installations at the plant or facility.

- (2) Certification shall be on a form obtained from the Department and shall be submitted to the Department not later than April 1 of the year following the year for which certification is required.”
- (e) **COMAR 26.11.06.08 - Nuisance.**
“An installation or premises may not be operated or maintained in such a manner that a nuisance or air pollution is created. Nothing in this regulation relating to the control of emissions may in any manner be construed as authorizing or permitting the creation of, or maintenance of, nuisance or air pollution.”
- (f) **COMAR 26.11.06.09 - Odors.**
“A person may not cause or permit the discharge into the atmosphere of gases, vapors, or odors beyond the property line in such a manner that a nuisance or air pollution is created.”
- (g) **COMAR 26.11.15.06 - Requirements for New Installations, Sources, or Premises.**
- (1) “Except as provided in §A(2) of this regulation, a person may not construct, modify, or operate, or cause to be constructed, modified, or operated, any new installation or source without first demonstrating to the satisfaction of the Department using procedures established in this chapter that total allowable emissions from the premises of each toxic air pollutant discharged by the new installation or source will not unreasonably endanger human health.
- (2) If a new installation or source will discharge a TAP that is not listed in COMAR 26.11.16.07 and will be part of an existing premises, then emissions of that TAP from existing sources or existing installations on the premises may be omitted from a screening analysis unless the TAP is added to COMAR 26.11.16.07.”

PART C - OPERATING CONDITIONS

- (1) The Permittee shall operate and maintain the screen and all installations and associated air pollution control equipment so as to assure full and continuous compliance with all applicable air pollution control regulations and permit conditions.
- (2) The Permittee shall properly maintain, calibrate, and operate all control panel instrumentation and all devices employed to monitor performance of the facility’s air pollution control devices.
- (3) The wet suppression system, which may include the use of surfactants and/or crusting agents, shall be used as necessary to comply with the particulate control standards.

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3800 NEWGATE AVENUE
BALTIMORE, MARYLAND 21224
PERMIT-TO-OPERATE NO. 510-2310

- (4) Fugitive dust from plant roads, stockpiles, and other surfaces that have the potential to create airborne dusts, shall be controlled by applying water, asphalt, oil, or suitable chemical dust suppressants or combination thereof, as necessary to comply with COMAR 26.11.06.03D.
- (5) The Permittee shall utilize good work practices as necessary to ensure compliance with applicable requirement including the odor and nuisance requirements of COMAR 26.11.06.08 and 09.

The following operating conditions apply only to ARA Registration No. 510-2310-6-2004.

- (6) The 50 HP engine associated with the 150 tons per hour coal screen shall be diesel fuel fired only.
- (7) The 150 tons per hour screen shall be operated such that the screen is only separating dirt from coal and that the screen is not being used to size the coal. The screen may not be used to separate the coal from refuse as defined in 40 CFR §60.251.
- (8) The diesel engine for the 150 tons per hour coal screen must be certified to the emissions standards in 40 CFR §60.4204(b), as applicable. **[Reference: 40 CFR §60.4211(c)]**
- (9) The Permittee must use, in the engine, diesel fuel that meets the requirements of 40 CFR §80.510(b):
 - (a) Sulfur content: 15 ppm maximum for non-road diesel fuel.
 - (b) Cetane index or aromatic content as follows:
 - (i) A minimum cetane index of 40; or
 - (ii) A maximum aromatic content of 35 volume percent.**[Reference: 40 CFR §60.4207(b) and 40 CFR §80.510(b)]**
- (10) The Permittee must operate and maintain the diesel engine that achieves the emissions standards as required by 40 CFR §60.4204 for non-emergency engines according to the manufacturer's written instructions or procedures developed by the Permittee that are approved by the engine manufacturer over the entire life of the engine. In addition, the Permittee may only change those settings that are permitted by the manufacturer. The Permittee must also meet the requirements of 40 CFR Parts 89, 94, and/or 1068, as applicable. **[Reference: 40 CFR §60.4206 and 40 CFR §60.4211(a)]**

PART D - RECORD KEEPING AND REPORTING REQUIREMENTS

- (1) The Permittee shall maintain for at least five (5) years, and shall make available to the Department upon request, records of the following information:

CONSOL MARINE TERMINALS, LLC.
3800 NEWGATE AVENUE
BALTIMORE, MARYLAND 21224
PERMIT-TO-OPERATE NO. 510-2310

- (a) The amount of coal loaded each month,
 - (b) Monthly amounts of coal transported on conveyor belts C-2 and C-6,
 - (c) The amount of coal processed through the screen annually,
 - (d) An operating log of the coal pile wet suppression system operation including:
 - (i) Records of the date, time, and duration of any use of the wet suppression system; and
 - (ii) Records of the use of surfactant and/or crusting agents, including date, time, and monthly usage (gallons).
- (2) The Permittee shall maintain at the facility for at least five (5) years records necessary to support annual certifications of emissions and demonstrations of compliance for toxic air pollutants. Such records shall include, if applicable, the following:
- (a) Mass emissions rates for each regulated pollutant, and the total mass emissions rate for all regulated pollutants for each registered source of emissions;
 - (b) Accounts of the methods and assumptions used to quantify emissions;
 - (c) All operating data, including operating schedules and production data, that were used in determinations of emissions;
 - (d) Amounts, types, and analyses of all fuels used;
 - (e) Any records, the maintenance of which is required by this permit or by State or federal regulations, that pertain to the operation and maintenance of continuous emissions monitors if applicable, including:
 - (i) All emissions data generated by such monitors;
 - (ii) All monitor calibration data;
 - (iii) Information regarding the percentage of time each monitor was available for proper service; and
 - (iv) Information concerning any equipment malfunctions.
 - (f) Information concerning operation, maintenance, and performance of air pollution control equipment and compliance monitoring equipment, including:
 - (i) Identifications and descriptions of all such equipment;
 - (ii) Operating schedules for each item of such equipment;
 - (iii) Accounts of any significant maintenance performed;
 - (iv) Accounts of all malfunctions and outages; and
 - (v) Accounts of any episodes of reduced efficiency.

CONSOL MARINE TERMINALS, LLC.
3800 NEWGATE AVENUE
BALTIMORE, MARYLAND 21224
PERMIT-TO-OPERATE NO. 510-2310

- (g) Limitations on source operation or any work practice standards that significantly affect emissions; and
 - (h) Other relevant information as required by the Department.
- (3) The Permittee shall submit to the Department by April 1 of each year during the term of this permit, a certification of emissions for the previous calendar year. The certifications shall be prepared in accordance with requirements, as applicable, adopted under COMAR 26.11.02.19D.
- (a) Certifications of emissions shall be submitted on forms obtained from the Department.
 - (b) A certification of emissions shall include mass emissions rates for each regulated pollutant, and the total mass emissions rate for all regulated pollutants for each of the Permittee's registered sources of emissions.
 - (c) The person responsible for a certification of emissions shall certify the submittal to the Department in the following manner:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”
- (4) The Permittee shall submit to the Department, by April 1 of each year during the term of this permit, a written certification of the results of an analysis of emissions of toxic air pollutants from the Permittee's facility during the previous calendar year. Such analysis shall include either:
- (a) A statement that previously submitted compliance demonstrations for emissions of toxic air pollutants remain valid; or
 - (b) A revised compliance demonstration, developed in accordance with requirements included under COMAR 26.11.15 & 16, that accounts for changes in operations, analytical methods, emissions determinations, or other factors that have invalidated previous demonstrations.

**CONSOL MARINE TERMINALS, LLC.
3800 NEWGATE AVENUE
BALTIMORE, MARYLAND 21224
PERMIT-TO-OPERATE NO. 510-2310**

- (5) The Permittee shall report, in accordance with the requirements under COMAR 26.11.01.07, occurrences of excess emissions to the Compliance Program of the Air and Radiation Management Administration.
- (6) All notifications required under 40 CFR 60, Subparts A and IIII shall be submitted to the following:

The Administrator
Compliance Program
Maryland Department of the Environment
Air and Radiation Administration
1800 Washington Boulevard, STE 715
Baltimore MD 21230

And

United States Environmental Protection Agency
Region III, Enforcement & Compliance Assurance Division
Air, RCRA and Toxics Branch (3ED21)
Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, PA 19103-2852

EXHIBIT 2

GHD Services, Inc., Curtis Bay Piers Coal Facility Explosion
Investigation, Cause and Origin Evaluation
CSX Transportation, July 29, 2022



Curtis Bay Piers Coal Facility Explosion Investigation

Cause & Origin Evaluation

CSX Transportation

29 July 2022

 **The Power of Commitment**

Project name		12568890 – CSXT Curtis Bay					
Document title		Curtis Bay Piers Coal Facility Explosion Investigation Cause & Origin Evaluation					
Project number		12568890					
File name		12568890 – Curtis Bay Piers Coal Facility Explosion Investigation Report					
Status Code	Revision	Author	Reviewer		Approved for issue		
			Name	Signature	Name	Signature	Date
S0	01	Dyron Hamlin	Nicholas Flolid		Dyron Hamlin		2022-07-29
[Status code]							
[Status code]							
[Status code]							
[Status code]							

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Executive Summary

On December 30, 2021, at approximately 11:24 AM US Eastern Standard Time, an explosion occurred in the North Reclaim Tunnel of the Curtis Bay Piers (CBP) Coal Facility in Baltimore, Maryland (hereafter, "the facility"). GHD was requested by CSXT to lead an investigation team tasked with determining the cause of the explosion. The investigation team was comprised of personnel with decades of experience in prevention of, responses to, and investigations of fires and explosions across a wide range of industries and scenarios

The North Reclaim Tunnel of the facility is comprised of an approximately 770-foot-long concrete tunnel running from north to south. An approximately 147-foot concrete escape tunnel extends westward from the north end of the North Reclaim Tunnel (hereafter, "North Escape Tunnel"). The North Reclaim Tunnel contained coal feeders, conveyor structure, and associated equipment. The 28 coal feeders were spaced equally from one another throughout the tunnel and were numbered from 4 through 31 from north to south. The North Escape Tunnel was empty with the exception of lighting and a ventilation system designed for air supply to the North Escape Tunnel.

The investigation focused upon visual inspection of the north main and escape tunnels and debris from the explosion, in an effort to identify two primary properties of the explosion: the location of its origin, and the potential initial sources of fuel and ignition. The investigation team preserved evidence such as loose debris and equipment to the extent possible, given constraints of safety and ongoing operational needs. Video footage of the explosion was collected from both on- and off-site sources, and was reviewed in detail as a further aide to understanding the location of the origin of the explosion, and its initial fuel and ignition sources. Employee interviews were conducted to potentially assist with understanding the nature and timing of the event. Samples of the coal being transferred at the time of the event were obtained and analysed for combustible properties. Ongoing monitoring and documentation of operations within the South Reclaim Tunnel have also informed the investigation in regards to potential atmospheric conditions at the time of the event.

Based upon the physical and video evidence of the explosion, the most likely location of origin of the explosion was between feeders 7 and 17 within the North Reclaim Tunnel. The explosion likely was initiated by the ignition of a localized flammable atmosphere comprised of methane released from the coal, and a relatively low concentration of coal dust made airborne by the operating conveyor, which enhanced the flammability of the released methane. This localized atmosphere was made possible by low ventilation rates, which did not allow for adequate dissipation and removal of methane and coal dust. This initial combustion event would have generated a pressure wave travelling both north and south through the North Reclaim Tunnel that increased the quantity and density of airborne coal dust within the tunnel. This coal dust is believed to have fueled further combustion through the tunnel and out of the south surface entrance and North Escape Tunnel of the North Reclaim Tunnel. Combustion and blast pressures increased along the tunnel's length, resulting in the visible plume that exited the south surface entrance, which damaged the adjacent central coal transfer tower.

Based on the above, the localized congregation of methane and airborne coal dust represents a cause of the December 30, 2021 explosion. The likely cause of the build-up of this flammable atmosphere was insufficient ventilation of the North Reclaim Tunnel, which is therefore also considered a cause. The precise source of the ignition has not been determined but is believed to have been located within the North Reclaim Tunnel between vertical Feeder 7 and 17.

CSXT is continuing its design of a new ventilation system for the North Reclaim Tunnel. Based on early analysis of the explosion, CSXT added monitoring devices and additional ventilation to the South Reclaim Tunnel. Ongoing monitoring of the South Reclaim Tunnel continues to demonstrate the effectiveness of increased ventilation coupled with dust cleanliness protocols to significantly mitigate the possibility of a flammable atmosphere within the tunnel. This information was used in designing the North Reclaim Tunnel to include monitoring devices, higher air flow, additional water sprays, skirting of conveyors, grounding of equipment and installation of electrical fixtures to meet appropriate electrical codes.

This report is subject to, and must be read in conjunction with, the limitations set out in section 1.0 and the assumptions and qualifications contained throughout the Report.

Contents

1.	Introduction	1
1.1	Purpose of this report	1
1.2	Scope and limitations	1
1.3	Assumptions	1
2.	Description of Facility	1
2.1	North Reclaim Tunnel	2
2.2	North Escape Tunnel	2
2.3	South Reclaim Tunnel	3
2.4	South Escape Tunnel	5
2.5	Railcar Offloading Infrastructure	6
3.	Description of Incident	7
3.1	Operations at Time of Incident	7
3.2	Employee Operations	8
3.3	Feeder Operations	8
4.	Scope of Investigation	8
4.1	Investigation Project Team	8
4.2	Investigation Objectives and Strategy	9
5.	Methods of Investigation	9
5.1	Visual Investigations of Tunnel	9
5.2	Collection and Mapping of Debris	10
5.2.1	Off-site Debris and Deposition	10
5.2.2	On-site Debris Field	10
5.2.3	Debris inside North Reclaim Tunnel	10
5.3	Surveillance Video Reviews	11
5.4	Modelling of Pressure Wave Propagation	11
5.5	Coal Samples	12
5.6	South Tunnel Evaluations	12
5.6.1	Monitoring During Operations	12
5.6.1.1	Air Monitoring	12
5.6.1.2	Ventilation Rate Monitoring	14
5.6.2	Review of Electrical Installations	15
5.7	Employee Interviews	16
6.	Results of Investigation	16
6.1	Initial Explosion	17
6.2	Secondary Energetic Event / Reflection	17
6.3	Tertiary Energetic Event and Deflagration from South Portal	18
7.	Recommendations	19

Figure index

Figure 2.2.1. North Escape Tunnel as seen on July 9, 2020.	3
Figure 2.3.1. Washing walkways of South Reclaim Tunnel. View towards north from tail pulley enclosed in yellow grating.	4
Figure 2.3.2. View from VF-36 along walkway towards the south of the South Reclaim Tunnel	5
Figure 2.4.1. South Reclaim Tunnel exhaust as seen on July 9, 2020.	6
Figure 2.5.1. Air monitor in top level of railcar dumper shed. The yellow arm in the bottom of the picture is part of the counterweighted platform.	7
Figure 5.6.1. Monitor on floor of South Reclaim Tunnel with sample tube leading to higher elevation	13
Figure 5.6.2. Monitoring high location near top of tunnel using tubing.	13
Figure 5.6.3. Temporary ventilation fan installed at south portal of South Reclaim Tunnel.	15
Figure 5.7.1. Graph of feeder operation leading up to the time of the explosion.	16
Figure 6.2.1. View east into escape tunnel portal. North wall (left in picture) is black; south wall is not.	17
Figure 6.3.1. Feeder hole for VF-21 from the surface of the coal transfer yard.	18
Figure 6.3.2. Feeder 21 from beneath the feeder hole, in the North Reclaim Tunnel.	19

Appendices

Appendix A	Map Overview of Facility
Appendix B	North Tunnel Diagrams
Appendix C	North Escape Tunnel Construction Drawings
Appendix D	Visual Summary of North Reclaim Tunnel
Appendix E	CAMBER Modelling Approach and Results
Appendix F	Coal Dust Sample Results
Appendix G	Weiser Engineering Electrical Inspection
Appendix H	Investigation Team Curriculum Vitae

1. Introduction

This report summarizes the findings of the Curtis Bay Piers Coal Facility Explosion investigation team as of July 25, 2022. These findings are based upon the best judgment and technical knowledge available, at the time of writing.

1.1 Purpose of this report

The purpose of this report is to provide a summary of the findings of the investigation team as of July 25, 2022. Further information may be forthcoming which would add clarity to certain aspects of the investigation; however, the most actionable aspect of the root cause investigation – fuel source and mitigation potential – is complete. This report may also be used to inform best practices for the ongoing safe operations of the CBP Coal Facility, using lessons learned from this incident and associated recommendations for future operations.

1.2 Scope and limitations

This report: has been prepared by GHD for CSX Transportation and may only be used and relied on by CSX Transportation for the purpose agreed between GHD and CSX Transportation as set out in section 1.1 of this report.

GHD otherwise disclaims responsibility to any person other than CSX Transportation arising in connection with this report. GHD also excludes implied warranties and conditions, to the extent legally permissible.

The services undertaken by GHD in connection with preparing this report were limited to those specifically detailed in the report and are subject to the scope limitations set out in the report.

The opinions, conclusions and any recommendations in this report are based on conditions encountered and information reviewed at the date of preparation of the report. GHD has no responsibility or obligation to update this report to account for events or changes occurring subsequent to the date that the report was prepared.

The opinions, conclusions and any recommendations in this report are based on assumptions made by GHD described in this report. GHD disclaims liability arising from any of the assumptions being incorrect.

Accessibility of documents

If this report is required to be accessible in any other format, this can be provided by GHD upon request and at an additional cost if necessary.

GHD has prepared this report on the basis of information provided by CSX Transportation and others who provided information to GHD, which GHD has not independently verified or checked beyond the agreed scope of work. GHD does not accept liability in connection with such unverified information, including errors and omissions in the report which were caused by errors or omissions in that information.

1.3 Assumptions

GHD assumes that the information provided by CSXT and its employees, for example in relation to employee interviews, is reliable and trustworthy. GHD further assumes that all relevant information available to CSXT management, and of which CSXT management is aware, has been made known and available to GHD during the course of this investigation. GHD assumes that all necessary access to facilities and information has been made known and available during the course of this investigation.

2. Description of Facility

The Curtis Bay Piers Coal Facility is comprised of incoming and outgoing rail service, a railyard, a coal transfer yard, railcar offloading infrastructure, conveyor infrastructure, pier loading facilities, and associated office, maintenance, and operations buildings. The focus of this report will be primarily on the coal transfer and storage yard and conveyor infrastructure.

The coal transfer yard is in the middle of the facility and is comprised of 8 primary stacking tubes (towers) which characterize the appearance of the facility. The transfer yard collects incoming coal into piles created by

transferring the coal along conveyors at the tops of the stacking tubes, down through the tubes, and into piles. There are five primary stacking tubes on the north side, and three on the south side of the transfer yard. In between the north and south sides of the transfer yard is a central transfer tower which contains conveyor infrastructure capable of diverting coal a number of different ways. Figure 1 in Appendix A shows an overview of the north coal transfer yard, along with annotated points of interest to the event and the investigation.

The explosion occurred on the north side of the transfer yard, within the North Reclaim Tunnel, which lies directly underneath the yard surface, upon which coal piles are formed. The coal from these piles is transferred to the conveyor system in the tunnel through the use of vibrating feeders mounted to openings in the yard surface. Figure 1 in Appendix B shows the general layout of the North Reclaim Tunnel, with its two parts – the North Reclaim Tunnel and the North Escape Tunnel.

2.1 North Reclaim Tunnel

The North Reclaim Tunnel contains the conveyor structure including the 28 vibratory feeders (commonly labelled VF-4 through VF-31) which are mounted to corresponding openings in the coal transfer yard. Figure 1 in Appendix B shows the general layout of the North Reclaim Tunnel. Discussions regarding the North Reclaim Tunnel operations will be discussed in Section 2.3 below, in context with the South Reclaim Tunnel, whose operations have continued since the event. The North Reclaim Tunnel is approximately 770 feet in length, with a flat section from VF-4 through VF-21, and ramped section gaining in elevation near VF-22.

2.2 North Escape Tunnel

The North Escape Tunnel was expanded in late 2019 / early 2020 to provide a better means of egress from the North Reclaim Tunnel. Appendix C contains the construction plan drawings for the escape tunnel enlargement / replacement.

Prior to installation of the North Escape Tunnel, the only means of egress from the north end of the North Reclaim Tunnel was a 36-inch diameter exhaust tunnel leading westward along the same path as the new North Escape Tunnel. This 36-inch diameter tunnel also served as an exhaust ventilation duct for the entirety of the North Reclaim Tunnel. Air was exhausted through a 42-inch fan mounted to the outlet of the tunnel. The 2019/2020 North Escape Tunnel expansion changed the ventilation system from an exhaust to a supply configuration. The expansion included equipping the tunnel with circular ducts along the ceiling of the tunnel, leading from a ventilation system designed to provide ventilation for occupation of the escape tunnel, at a design flowrate of approximately 4,000 cfm. Figure 2.2.1 shows the conditions of the North Escape Tunnel after the expansion, and prior to the explosion.

Figure 2.2.1. North Escape Tunnel as seen on July 9, 2020.



2.3 South Reclaim Tunnel

The South Reclaim Tunnel is comprised of two parts – a main tunnel containing coal transport infrastructure, and an escape tunnel. The South Reclaim Tunnel and South Escape Tunnel run along the same north-south axis, in

contrast to the North Reclaim Tunnel, whose escape tunnel is at an angle slightly more acute than perpendicular. A generic figure depicting the layout of the South Reclaim Tunnel is included in Figure 2 in Appendix B.

The South Reclaim Tunnel provides insight as to the operation of the North Reclaim Tunnel, as it includes similar operating equipment (vibratory feeders – VF-32 through VF-48, conveyor structure, lighting, exhaust conditions, and escape tunnel) and similar operational conditions to its counterpart to the north. Thus, the South Reclaim Tunnel has been used as an effective go-by during loading operations from the south coal transfer yard during 2022 and to inform the investigation team.

Each vibratory feeder is designed to provide up to 900-1,000 tons per hour of coal through the feeder holes in the coal transfer yard, while in reality they generally operate at approximately 500 tons per hour. Any coal accumulating in the walkways on either side of the conveyor is washed periodically to a sump at the south end of the tunnel. A view of washing towards the sump is shown in Figure 2.3 below.

Figure 2.3.1. Washing walkways of South Reclaim Tunnel. View towards north from tail pulley enclosed in yellow grating.



Figure 2.3.2. View from VF-36 along walkway towards the south of the South Reclaim Tunnel



2.4 South Escape Tunnel

A similar expansion of the escape tunnel in the South Reclaim Tunnel was undertaken in early 2021 (similar to what was done in the North Reclaim Tunnel, as described in Section 2.2). A photograph of the South Reclaim Tunnel ventilation system from the smaller 36-inch tunnel / duct is depicted in Figure 2.4.1 below. This would have been a similar arrangement to the previous exhaust fan on the North Escape Tunnel). A similar ventilation system to that of the new North Escape Tunnel was installed during the expansion of the South Escape Tunnel to its current dimensions. Operational tests of the new ventilation system, which was designed to provide fresh air to the escape tunnel only, showed performance consistent with its design flowrate of approximately 4,000 cfm. This would be similar to the flowrate present in the North Reclaim Tunnel, which shared the same cross-sectional dimensions and escape tunnel ventilation specifications.

Figure 2.4.1. South Reclaim Tunnel exhaust as seen on July 9, 2020.



2.5 Railcar Offloading Infrastructure

Railcars entering the facility are decoupled from one another, and enter one of three dumper sheds, where they are turned upside down using a counterweighted platform system. The coal is loaded by means of hoppers and

conveyors into the network of conveyors leading to the transfer tower, or directly to the piers for loading onto ships and barges.

GHD has been monitoring air quality in the dumper sheds since the explosion occurred as an additional means of safety precautions. GHD continues to work with CSXT to develop long-term monitoring solutions as warranted.

Figure 2.5.1. Air monitor in top level of railcar dumper shed. The yellow arm in the bottom of the picture is part of the counterweighted platform.



3. Description of Incident

On December 30, 2021, at approximately 11:24 am US Eastern Standard Time, an explosion occurred in the North Reclaim Tunnel at the Curtis Bay Piers Coal Facility (“the facility”). A pressure wave was observed coming from the North Escape Tunnel. Multiple plumes of exhausted coal dust were observed being emitted from the coal transfer yard. A fireball was observed exiting the south portal of the North Reclaim Tunnel.

3.1 Operations at Time of Incident

At the time of the incident, up to 6 vibratory feeders were in operation, moving coal from piles surrounding Tower 1 into the North Reclaim Tunnel. As each vibratory feeder came online, personnel working the piles would ensure the feeders were moving coal and operating correctly. Bulldozers would push coal down through the coal piles into the feeder holes and vibratory feeders. As each vibratory feeder moved coal, crevasses would form in the coal piles where coal was moving to the conveyer system in the tunnel below. The bulldozers on the piles would push the coal towards the feeder holes to ensure a continuous supply of coal was entering the feeder holes.

On the morning of the explosion, employees reported the tunnel had just been cleaned, and there was very little accumulated coal in the walkways. The general consensus was that the tunnel was as clean as it had ever been. As the coal was beginning to move along the conveyor, it was reported to be very wet as well, with more than one employee describing the coal entering the transfer tower as “black rain” due to how wet the coal was. Some lights inside the tunnel were undergoing maintenance, as some of the new LED lights which had recently been installed were not working and were being repaired.

3.2 Employee Operations

Three employees stated they were in the tunnel at approximately 10:00 am starting the feeders and evaluating their operation. These employees were responsible for operating bulldozers on the coal piles surrounding Tower 1; two heavy equipment operators were training a third junior operator to use the bulldozers. The employees were also responsible for going into the North Reclaim Tunnel to apply a jet of water, if necessary, to the vibratory feeders in the event they were not moving coal. At 10:00 am on the day of the event, the three employees had been in the tunnel applying water to VF-6 to get coal moving. The two bulldozer operators had resumed their positions on the pile, and the junior operator had taken a position at the base of the pile to observe their operations when the explosion occurred.

3.3 Feeder Operations

The vertical / vibratory feeders (commonly abbreviated “VF”) had three essential setpoints: manually engaged in the tunnel, activated in the control room, and remotely turned on at the coal pier to control the total flowrate of coal. At the time of the explosion, VF-5 through VF-10 had been activated in the control room and were being turned on at the coal pier as needed. Feeder 10 had some difficulty being engaged, and a fuse and coil had to be replaced in the control room, which was located next to the transfer tower (i.e., not in the tunnel). As noted in Section 3.2, VF-6 needed a water jet applied to get coal moving. The other feeders were noted by facility personnel to have operated normally. All 6 feeders were operating at the time of the explosion.

4. Scope of Investigation

The scope of the investigation was to determine the source of the explosion and to advise CSXT on operational changes which may have been warranted by the findings of the investigation. The investigation team relied on information provided by CSXT and were satisfied that all requests for information were met. The team was limited to some degree by the extent of damage to the tunnel, and by safety and operational considerations. The damage to the tunnel was extensive; thus, the nature and condition of the equipment prior to the explosion was in some cases difficult to deduce. Safety considerations precluded evaluation of certain portions of the tunnel in an undisturbed state; for example, the southern-most portion of the North Reclaim Tunnel was inaccessible due to structural stability concerns and limited means of physical access due to the build-up of debris. Operationally, removal of the debris needed to be conducted as a part of recovery efforts; therefore, some of the debris within the tunnel was only made visible through its forcible removal, which required some destructive actions that may have caused further damage beyond what resulted from the explosion.

The investigation team proceeded to gather and preserve all the evidence possible, despite these constraints. Every effort was made to capture the equipment in its final location, with annotated photographs to describe its condition. This information has been archived and may be produced upon request to CSXT as needed. Investigation of individual pieces of evidence has been undertaken with care and consideration of other potentially interested parties and in some cases has slowed the investigation process. The investigation team has worked with CSXT and other stakeholders to find an appropriate balance to these sometimes conflicting priorities.

4.1 Investigation Project Team

Dyron Hamlin, a GHD Principal chemical engineer and certified industrial hygienist (CIH) with specific experience in response to and investigation of emergency events of this nature, was requested by Mike Austin of CSXT, to lead the investigation team. The investigation team was also comprised of members of EFI Global, SciRisq, and

other CSXT personnel. James Wesevich and David Beachy of EFI Global were directly involved with on-site activities, and Andrew Staszak of SciRisq supported the team with Computation Fluid Dynamics (CFD) modelling expertise. Additional personnel were involved in ongoing operations and were engaged for their experience and expertise related to similar circumstances, and their individual expertise has also been relied upon by the primary investigation team. Their contributions are acknowledged and appreciated. CVs for the investigation team are provided in Appendix H.

4.2 Investigation Objectives and Strategy

The investigation team was charged with determining the source of the explosion, and to advise CSXT personnel of any immediate operational changes which should be instituted to ensure employee safety in ongoing operations at the CBP facility as well as other coal transfer facilities. With these objectives, the investigation team set about evaluating the physical evidence available, including:

- Off-site impacts to buildings which would indicate the extent of overpressure effects (broken windows, damage to building structures, etc.)
- Off-site impacts which would indicate material that was released as a result of the explosion and combustion events
- On-site debris field investigation, to inform the possible source of the initiating event, as well as the direction and extent of overpressure
- Tunnel walk-throughs, to evaluate structural damage which might give insight to the source of the explosion as well as the extent of overpressure based on structural damage

In addition to the physical evidence, the investigation team also reviewed objective evidence from video footage collected both on- and off-site. Finally, subjective accounts were obtained through interviews of both off-site and on-site personnel with first-hand observations of the event.

5. Methods of Investigation

The investigation team used a multi-pronged approach to evaluating the effects of the explosion, with a view to determining its origin, and to advise corrective actions to prevent future loss. The primary methods used for investigating the explosion were:

- Visual Investigations of Tunnel
- Collection and Mapping of Debris
- Surveillance Video Reviews
- Modelling of Pressure Wave Propagation
- Evaluation of Coal Samples
- Evaluation of South Tunnel Operations
- Employee Interviews

The following sections will detail the results of each of these methods; further detail is available in the Appendices.

5.1 Visual Investigations of Tunnel

Investigation team personnel conducted dozens of walkthroughs of the tunnel after the incident occurred. The tunnel was deemed structurally sound by an on-site third-party structural engineer prior to entry. Access was limited to the walkway along the western wall of the North Reclaim Tunnel, from the north end of the tunnel to VF-27. Beyond VF-27 towards the south was deemed to be potentially structurally unsound due to the flaring of the ceiling of the tunnel at that location.

Each item of debris in the tunnel was marked and geolocated and is archived in a database which may be made available upon request to CSXT. The items were photographed and numbered according to their position in the

North Reclaim Tunnel. An example presentation is provided in Appendix D, showing the state of the vertical / vibratory feeders and conveyor structure following the explosion.

Of particular note and interest to the investigation team was the apparent direction of flow, as noted on Figure 1 in Appendix B, and elsewhere in Appendix D. Damage to VF-4 and the tail pulley (at the northern end of the tunnel) were also of particular note and are addressed in more detail in Section 5.4. Images of each may be seen in Appendix D. In short, the damage at the north end of the tunnel, by the intersection with the North Escape Tunnel, indicated a secondary explosion or otherwise reflected overpressure which caused more damage relative to the feeders near it, or within the North Escape Tunnel.

5.2 Collection and Mapping of Debris

Debris was released from the tunnel from three primary vectors:

- Released from the North Escape Tunnel, along with the pressure wave, towards the west into the railyard and as into the neighborhood to the west of the facility property
- Released vertically from the open feeder holes in the North Reclaim Tunnel and primarily depositing on the facility property
- Released towards the south from the south portal of the North Reclaim Tunnel, along with the fireball, primarily impacting the central transfer tower.

5.2.1 Off-site Debris and Deposition

GHD conducted a survey of the surrounding neighborhood and found deposition of coal dust (as distinguished from combusted material) in an approximately 12-block area to the west of the facility. The region was consistent with what would be expected to have emanated from the escape tunnel, and possibly from the vertical releases from the open feeder holes advected by winds.

5.2.2 On-site Debris Field

The on-site debris field was located directly west of the North Escape Tunnel portal, and it was comprised of material released primarily from the escape tunnel. This included the ventilation system, escape tunnel lights, electrical and alarm systems associated with the escape tunnel, ducts from the escape tunnel, and the oxygen tank and cart that were located inside the escape tunnel. As noted in Section 5.3 below, the propane tank which was released from the North Escape Tunnel was located on the adjacent property in the direction of the escape tunnel portal, after having come to rest next to the warehouse wall under construction to the west of the facility.

5.2.3 Debris inside North Reclaim Tunnel

Debris inside the North Reclaim Tunnel included:

- All vertical / vibratory feeders, table shaker, and hoppers
- Conveyor structure – belt, frame, and pulleys
- Light fixtures
- Loose electrical conduit and junction boxes
- Two ladders – one fiberglass and one aluminum
- Two gas cylinders which were used in cutting / replacing conveyor infrastructure – one oxygen, one propane. The propane cylinder was found to be slightly leaking and was recovered by CSXT Hazmat personnel on December 31.

To the extent possible, the debris inside the North Reclaim Tunnel was logged and collected for further investigation as needed. As of the time of the preparation of this report, the investigation team has had opportunity to evaluate all of the debris to a satisfactory degree, with the exception of some of the recently-installed LED light fixtures and conduit. All of the debris removed from the tunnel was documented, geolocated, and photographed as conditions allowed.

5.3 Surveillance Video Reviews

Surveillance video was invaluable to the investigation team to validate employee eyewitness accounts, and to explain the timing and speed of the event. Specifically, three primary videos proved most valuable:

- Off-site video from a neighboring auto salvage yard facility, Beltsville Auto Parts
- On-site video facing west, viewing bulldozer activities on the coal pile near Tower / Stacker Tube 1
- On-site video facing south, located along the eastern side of the Towers / Stacker Tubes

The off-site surveillance video showed a number of compelling phenomena. The vestibule of the North Escape Tunnel was blown outwards, and the resulting pressure wave was apparent from the surveillance video. The investigation team was able to slow the video down and analyze the timing of the North Escape Tunnel pressure wave relative to the fireball exiting the south portal of the North Reclaim Tunnel. Given the limitation of a pressure wave propagating through the atmosphere at the speed of sound, the investigation team was able to estimate that the source of the initial ignition would have had to have been somewhere near the midpoint of the south portal of the North Reclaim Tunnel and the west portal of the North Escape Tunnel. The video provided was at a rate of approximately 28 frames per second. On the video, approximately four frames elapse between the appearance of the pressure wave at the portal of the North Escape Tunnel and the fireball appearing at the south portal of the North Reclaim Tunnel. This indicates the time between the appearance of those two effects is approximately 0.1-0.2 seconds. If the pressure source originated from the same location within the tunnel, the distance to either location would be within 100-200 feet of the other, based on the speed of sound of approximately 1125 feet per second. This places the initiating event near the middle of the tunnel, which is consistent with other aspects of the investigation team's evaluation.

A propane cylinder from a cutting torch assembly and its skid were visible being projected from the North Escape Tunnel. The investigation team closely examined the possibility of the involvement of propane from one of the two cylinders in the tunnel as a potential fuel source for the explosion. Upon review of the surveillance video, unignited propane was visibly leaking from the cylinder projected from the escape tunnel upon colliding with the warehouse wall, as depicted on Figure 4 in Appendix B. For this reason and others discussed elsewhere, the propane cylinder was ruled out as a cause of the explosion.

The on-site video facing west showed the bulldozers operating on the coal pile near Tower / Stacker Tube 1. The ventilation system that was mounted to the top of the North Escape Tunnel vestibule was reported by employees to have been projected vertically to nearly the height of the stacking tubes (approximately 150 feet). Debris is visible at the reported location in this on-site video.

The on-site video facing south provided some insight into the fireball which emanated from the south portal of the tunnel. Review of this video was helpful to validate some of the modelling which was conducted, and is discussed in Section 5.4.

These videos have been archived and may be made available upon request to CSXT.

5.4 Modelling of Pressure Wave Propagation

The investigation team used an industry standard computational fluid dynamics (CFD) model called CAMBER to evaluate the pressure propagation throughout the tunnel. CAMBER is a simulation domain that uses Cartesian Adaptive Meshing for Blast, Explosion and Release scenarios. It applies hydrocode and CFD techniques to simulate a variety of problems to include simulation of high explosives, and gas-phase/ complex combustion. It uses an object-oriented structure, applying a finite-volume formulation on an automatic mesh refinement (AMR) framework.

The investigation team created CAD drawings of the North Reclaim Tunnel which included features significant to the propagation of a pressure wave and combustion, such as the feeder holes which were open to atmosphere, the presence of vertical feeders and conveyor structure as interfering geometries within the tunnel, and the varying geometries of the North Reclaim Tunnel and North Escape Tunnel. These CAD drawings were imported to CAMBER using a utility that allows for the model to define complex geometries.

The CAMBER model inputs were varied to produce a number of scenarios, which were then compared to observations of damage, debris, and other physical evidence that remained from the explosion. Inputs such as the location of the initiating event, the combustible fuel composition, and the ignition source and timing were varied. Based on the results of the modelling, the investigation team confirmed the likely location of the initiating event as originating between VF-7 and VF-17, with areas closer to VF-17 more likely. The models affirmed the presence of a pressure wave build-up at the western portal of the North Escape Tunnel, as well as a combustion event culminating at the south portal of the North Reclaim Tunnel. They also affirmed the fuel composition as most likely a mixture of methane and entrained coal dust, with secondary and tertiary energetic events / deflagrations at the north end of the North Reclaim Tunnel and the area near VF-21, with a ramp-up in pressure from VF-21 to the south portal.

A full summary of the modelling approach and results is available as Appendix E

5.5 Coal Samples

GHD collected coal samples from the conveyor structure to characterize the possible accumulated dust which may have contributed to a secondary and / or tertiary combustible dust explosion. The samples were sent to EMSL Laboratory in and had them analyzed for combustibility. The results of the analysis were incorporated in the modelling described in Section 5.4 above, and in the modelling results described in further detail in Appendix E. A full copy of the sample results is also included in Appendix F.

5.6 South Tunnel Evaluations

The South Reclaim Tunnel has the same cross-sectional area, a similar ramp-up design towards its exit portal, and nearly identical equipment to that installed in the North Reclaim Tunnel prior to the explosion. As such, it provided a useful go-by for conditions that may have been present in the North Reclaim Tunnel prior to the explosion. The investigation team used observations from the South Reclaim Tunnel in its determination of the cause and origin of the explosion, and to continue to improve operations at the facility.

5.6.1 Monitoring During Operations

Since the restart of the South Reclaim Tunnel operations, GHD has been monitoring the air continuously for both gas and particulate matter concentrations during operations. In addition, GHD has assisted CSXT personnel with monitoring the ventilation conditions within the tunnel. Aside from brief excursions for methane, generally in the range of less than 10% of the lower explosive limit (LEL), levels have been consistently well below lower explosive limits or non-detect for either gases or particulate matter levels similar to background air, and well below any fractional threshold of the LEL that would trigger a temporary cessation of operations.

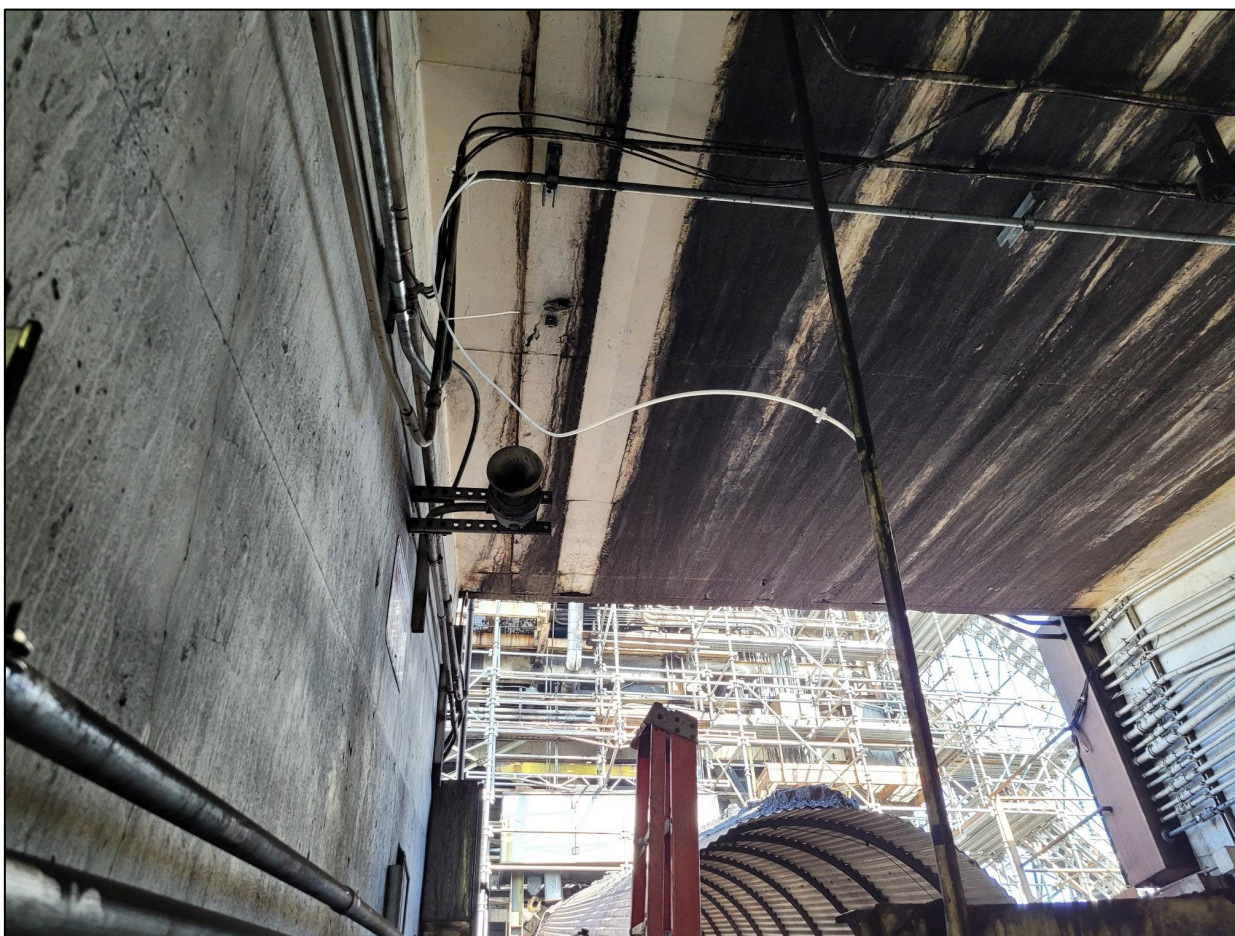
5.6.1.1 Air Monitoring

Air monitoring has been conducted inside the South Reclaim Tunnel for the purpose of ensuring operational safety and health for workers inside the tunnel. Air monitoring has been conducted using both handheld and telemetry-system air monitoring devices. Honeywell / RAE Systems AreaRAEs have been stationed throughout the South Reclaim Tunnel since operations resumed. These units are equipped with combustible gas sensors capable of detecting methane. Particulate matter monitoring has also been conducted to characterize conditions for the purpose of ensuring operational safety and health for workers inside the tunnel while coal is being transferred.

Figure 5.6.1. Monitor on floor of South Reclaim Tunnel with sample tube leading to higher elevation



Figure 5.6.2. Monitoring high location near top of tunnel using tubing.



5.6.1.2 Ventilation Rate Monitoring

During the restart of the South Reclaim Tunnel, CSXT installed a temporary fan capable of providing up to 100,000 cfm airflow. At normal idle, the fan provides 80,000 cfm airflow, which would yield a theoretical linear flowrate of 500 feet per minute through the South Reclaim Tunnel. The mining industry uses a layering number analysis method to ensure adequate ventilation in underground coal mines. Typical linear velocities that are recommended for places where workers are present, and to prevent methane layering near ceilings or creating pockets in tunnels are reported to be 200-600 feet per minute.^{1,2} This is consistent with observations in the South Reclaim Tunnel.

¹ Vinson, R.P. et al., METHANE ACCUMULATIONS IN COAL MINE ROOF CAVITIES, 1978, USBM Report of Investigations, RI 8267

² McPherson, M.J. "Subsurface Ventilation Engineering." Accessed at [https://wipp.energy.gov/Library/Information Repository A/Supplemental Information/2019/References/McPherson.%202009.pdf](https://wipp.energy.gov/Library/Information%20Repository/A/Supplemental%20Information/2019/References/McPherson.%202009.pdf).

Figure 5.6.3. Temporary ventilation fan installed at south portal of South Reclaim Tunnel.



5.6.2 Review of Electrical Installations

CSXT hired Weiser Engineering, P.C., a third-party electrical engineer licensed in the State of Maryland to evaluate the electrical installations in the South Reclaim Tunnel. Specifically, concerns were raised regarding

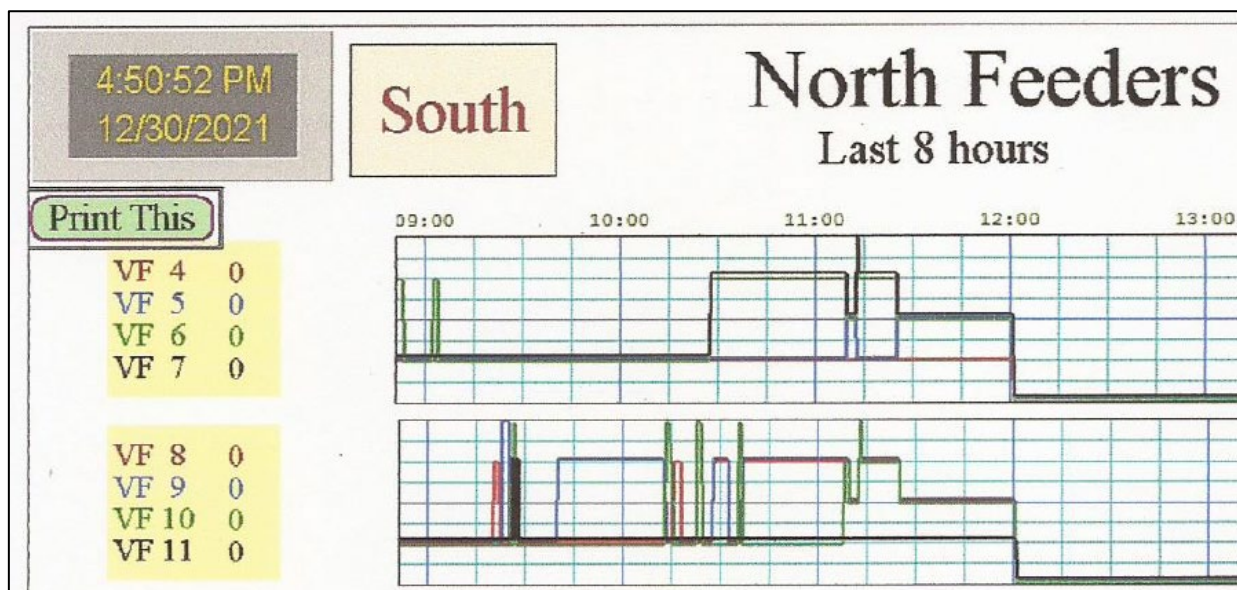
some of the electrical systems, including the recently installed LED light fixtures. The inspection of the South Reclaim Tunnel revealed a number of installations which did not meet National Electrical Code Article 500 and 501 requirements for Class I, Div II locations. A full copy of the report is provided in Appendix G.

5.7 Employee Interviews

The investigation team interviewed or reviewed interviews of employees present at the facility on the day of the event. These interviews are documented and witness statements were obtained and may be made available for review upon request to CSXT.

Additional detail was provided by Bruno Reyntjens of PCMA Systems, Inc. regarding the control system operation of the feeders during the time of the explosion. He reported that no feeders were being turned off or turned on in the moments before the explosion. A graph of the system is provided in Figure 5.7.1 below, with the intermittent activation of VF-5 through VF-10 visible on the graph.

Figure 5.7.1. Graph of feeder operation leading up to the time of the explosion.



6. Results of Investigation

Based on the above strategy, methodology, and resulting evaluations, the investigation team concluded that the source of the initiating explosion was a combination of methane and coal dust accumulating in the North Reclaim Tunnel between VF-7 and VF-17. Propane was ruled out as a probable fuel due to examination of the regulators and valves recovered from the tanks, which were found to be in the closed position; due to the presence of uncombusted propane leaking from the propane cylinder which struck the warehouse wall; and due to the more probable presence of methane and coal dust. There was also no evidence that certain other structures and equipment damaged during the incident, including the concrete structure of the North Reclaim and North Escape tunnels, the continuous conveyor, and the vertical feeders, would have been causes of the explosion.

The ventilation of the tunnel was inadequate to effectively disperse methane and coal dust produced during the movement of coal in the tunnel, as evidenced by ongoing operations in the South Reclaim Tunnel – namely, when ventilation is not provided in the South Reclaim Tunnel, ongoing monitoring shows that levels of methane can reach up to a maximum of 44% of the LEL for methane, or 2.2% methane by volume. This level was not representative of normal operations; LEL has exceeded 5% on few occasions.

The theory of the explosion is settled on the following facts:

1. Methane from the coal, along with some coal dust, provided the initial fuel

2. Inadequate ventilation allowed the atmosphere to build up flammable levels of this fuel
3. An ignition source for the fuel caused an initiating event between feeders 7 and 17 in the North Reclaim Tunnel
4. This created a lofting event that unexpectedly increased the concentration of coal dust sufficient for combustion in other parts of the tunnel, leading to secondary and tertiary energetic events inside the North Reclaim Tunnel.

6.1 Initial Explosion

The initial explosion likely occurred between VF-7 and VF-17, and most likely was fueled by methane and coal dust. As noted in Appendix E, flammable gases will enhance the combustibility of dust, and dust will enhance the flammability of commingled gases. It is likely that the poorly ventilated tunnel, with an estimated linear air flowrate of approximately 25 feet per minute, allowed this mixture to accumulate. An ignition source within the tunnel caused this mixture to ignite and create a pressure wave that propagated north and south through the tunnel.

6.2 Secondary Energetic Event / Reflection

The pressure wave traveling north in the tunnel encountered the wall at the north end of the tunnel, and was magnified by reflection, as well as the additional confinement at the junction due to tunnel geometry (for example, an approximately 2-foot drop in elevation between the floor of the escape tunnel and the floor of the main tunnel). Pressure built slowly due to the confinement by the vestibule enclosure at the west portal of the escape tunnel until it failed outwards and released the pressure wave, in the absence of combustion. This release is partially evidenced by the presence of coal dust on the north wall of the escape tunnel, and absence of coal dust on the south wall of the escape tunnel, as depicted in Figure 6.2.1.

Figure 6.2.1. View east into escape tunnel portal. North wall (left in picture) is black; south wall is not.



6.3 Tertiary Energetic Event and Deflagration from South Portal

The pressure wave traveling south towards the south portal of the main tunnel built in intensity and picked up additional fuel in the form of dust and additional methane being released by the coal. A tertiary pressure front likely built near VF-21, which was thrust upward and outward through its feeder hole. Figure 6.3.1 shows the surface picture of VF-21, and Figure 6.3.2 shows the feeder from inside the tunnel. This pressure front led to the combustion of a large amount of fuel, and the resulting fireball that exited the south portal.

Figure 6.3.1. Feeder hole for VF-21 from the surface of the coal transfer yard.



Figure 6.3.2. Feeder 21 from beneath the feeder hole, in the North Reclaim Tunnel.



7. Recommendations

To prevent this type of event from occurring, the following recommendations should be considered to minimize the risk of the presence of flammable atmospheres.

The primary means of preventing this type of event is the provision of adequate ventilation, ongoing monitoring to validate continued safe operations, and the installation of electrical systems that meet National Electric Code.

Current plans for repair of the North Reclaim Tunnel include:

- 300+ feet per minute airflow (final design to be determined)
- Reduction of feeders from 28 to 15
- New clam shell style feeders instead of vibratory feeders to reduce dust generation and power requirements
- Skirting (sides and top) of conveyor to minimize dust generation, loss, and potential for build up within the tunnel, and to preclude electrical sources in vicinity of conveyor
- Air monitors placed approximately every 80 feet
- Dust suppression at exit side of each feeder using water mist
- Static control through grounding at each end of tunnel
- Electrical system throughout at typically 24 Volts, with higher supply (240 V) reserved only for sump pump
- Electrical system designed to applicable NEC codes for Class I and II Div II specifications up to 15-foot radius outside tunnel; final validation to be conducted by licensed electrical engineer

As noted, GHD has been monitoring the South Reclaim Tunnel continuously since its return to operation. The monitoring includes LEL, VOCs, H₂S, CO, and dust. No levels of any analytes have been a cause for concern

during normal operations. CSXT has increased the flow of fresh air within the South tunnel. Monitoring in the South Reclaim Tunnel has confirmed these efforts have proved effective in maintaining safe conditions.

Aside from brief excursions, levels have been consistently well below lower explosive limits for either gases or coal particulate matter, and well below any fractional threshold of the lower explosive limits that would trigger a temporary cessation of operations. Although the facility is not under the Mine Safety and Health Administration jurisdiction, as a general guideline, MSHA regulations dictate that surface installations maintain methane levels below 1.0%, or 20% of the lower explosive limit (LEL) for methane.³ Operations in the South Reclaim Tunnel have been monitored continuously since resuming operations and have been consistently below 20% of the LEL under normal ventilation conditions. These parameters are being monitored 24/7 by personnel who will make necessary process adjustments, including shutdown of operations, as needed. No shutdown has been necessary.

Similar measures are being implemented in connection with the repair of the North Reclaim Tunnel. Namely, sensors are going to be placed approximately every 80 feet throughout the tunnel. In addition, dust control measures are being implemented, including skirting surrounding the conveyor, and water mist suppression at the exit of each feeder. The feeder systems are also designed to minimize the generation of dust – rather than using a vibratory system, the new feeder systems are clam shell design, meaning they will more directly introduce the coal to the conveyor (lowered a short distance), thereby reducing dust generation.

³ 30 CFR 77.201

Appendices

Appendix A

Map Overview of Facility

Appendix B

North Tunnel Diagrams

Appendix C

North Escape Tunnel Construction Drawings

Appendix D

Visual Summary of North Reclaim Tunnel

Appendix E

CAMBER Modelling Approach and Results

Appendix F

Coal Dust Sample Results

Appendix G

Weiser Engineering Electrical Inspection

Appendix H

Investigation Team Curriculum Vitae



ghd.com

→ **The Power of Commitment**

EXHIBIT 3

Maryland Department of the Environment July 20, 2022
Notice of Violation to CSX Transportation, Inc.



Maryland
Department of
the Environment

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor

Horacio Tablada, Secretary
Suzanne E. Dorsey, Deputy Secretary

July 20, 2022

Mr. Aleek Young, General Manager
CSX Transportation, Inc. – Curtis Bay Piers
1090 Benhill Ave
Baltimore, MD 21226

RE: Notice of Violation – December 30, 2021 Curtis Bay Terminal Coal Explosion

Dear Mr. Young,

Enclosed please find a Notice of Violation (NOV) for violations of the Maryland Air Quality Act, Maryland Code, Environment Article, §2-101 et seq. The NOV is being issued in regard to the December 30, 2021 North Reclaim Tunnel coal explosion at CSX's Curtis Bay Terminal.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Steven Lang, Division Chief
Air Quality Compliance Program
Maryland Department of the Environment

cc: R. Hensley, CSX-Environmental Programs
A. Bianca MDE-ARA
F. Courtright, MDE-AQCP
D. Davis, MDE-AQCP

**State of Maryland
Department of the Environment**

Air and Radiation Administration
1800 Washington Boulevard, Suite 715
Baltimore, MD 21230-1720

**Notice of Violation
of Air Pollution Regulations**

Date of Notice: July 20, 2022

Name of Responsible Person or Company: CSX Transportation Inc. – Curtis Bay Piers

Attention: Mr. Aleek Young, General Manager

Address: 1090 Benhill Ave Baltimore, MD 21226

County: Baltimore City

You are hereby notified that you have been observed to violate the Air Pollution Control Regulations of the State of Maryland.

The specific regulations violated are COMAR 26.11.02.05, COMAR 26.11.06.02C(2), COMAR 26.11.06.03,
COMAR 26.11.06.08, **and** COMAR 26.11.06.09. **The circumstances are as follows:**

Date and Time of Occurrence: December 30, 2021 at 11:24 a.m. EST

Source of Pollution: North Reclaim Tunnel of the Curtis Bay coal terminal

Description of Violation: CSX did violate or cause to be violated terms or conditions of a permit issued under COMAR 26.11.03. CSX did cause or permit the discharge of emissions from an installation which was visible to human observers. CSX did cause or permit emissions without taking reasonable precautions to prevent particulate matter from becoming airborne. CSX did operate or maintain an installation or premise that resulted in the discharge of emissions into the atmosphere in such a manner that a nuisance or air pollution was created. CSX did cause or permit the discharge of unpermitted emissions, including CO₂, CO, NO_x, VOC, and SO₂ into the atmosphere.

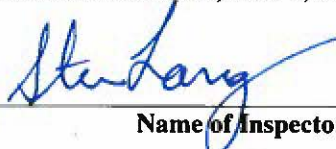
Description of Weather: Cloudy – Light precipitation Temperature- approximately 50 °F

Estimated Wind Speed: Light - Approximately 3 **mph; Direction:** Easterly

Comments: On December 30, 2021 at 11:24 a.m. EST a coal explosion occurred in the North Reclaim Tunnel of the CSX - Curtis Bay Terminal that resulted in the above cited violations.

You should take steps to prevent recurrence of this situation. Violations of the Maryland Air Quality Act, Maryland Code, Environment Article, §2-101 et seq., and the regulations adopted under the Act are subject to civil penalties of up to \$25,000 for each day of violation and to criminal penalties. See Environment Article, Title 2, Subtitle 6.

If you have any questions about this Notice, please contact me.


Name of Inspector

Steven Lang

443-695-7437

Telephone Number

EXHIBIT 4

U.S. Occupational Safety and Health Administration
June 29, 2022 Citation and Notification of Penalty to
CSX Transportation, Inc.

U.S. Department of Labor Occupational Safety and Health Administration
1099 Winterson Road
Suite 140
Linthicum, MD 21090



06/29/2022

CSX Transportation, Inc.
and its successors
500 Water Street, Attn: Brooke Martin, J275
Jacksonville, FL 32202

Dear Employer:

Enclosed you will find citations for violations of the Occupational Safety and Health Act of 1970 (the Act) which may have accompanying proposed penalties. Also enclosed is a booklet entitled, "Employer Rights and Responsibilities Following an OSHA Inspection", (OSHA 3000-04R) revised 2018, which explains your rights and responsibilities under the Act. If you have any questions about the enclosed citations and penalties, I would welcome further discussions in person or by telephone. Please contact me at (410) 865-2055.

You will note on page 6 of the booklet that, for violations which you do not contest, you must (1) notify this office promptly by letter that you have taken appropriate corrective action within the time set forth on the citation; and (2) pay any penalties assessed. Please inform me of the abatement steps you have taken and of their dates together with adequate supporting documentation; e.g., drawings or photographs of corrected conditions, purchase/work orders related to abatement actions, air sampling results. This information will allow us to close the case.

As indicated on page 3 of the booklet, you may request an informal conference with me during the 15-working-day notice of contest period. During such an informal conference you may present any evidence or views which you believe would support an adjustment to the citation or the penalty.

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Area Director within 15 working days of your receipt of the citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete the attached notice at the bottom of this letter and post it next to the Citations as soon as the time, date and the place of the informal conference have been determined. Be sure to bring to the conference with you any and all supporting documentation of existing conditions as well as of any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

You should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of Electronic Freedom of Information Act. The information related to these alleged violations will be posted when our system indicates that you have received this citation. You are encouraged to review the information concerning your establishment at www.osha.gov. If you have any dispute with the accuracy of the information displayed, please contact this office.

Sincerely,

A handwritten signature in black ink that reads "Nadira Janack". The script is cursive and fluid, with the first name "Nadira" and last name "Janack" clearly distinguishable.

Nadira Janack
Area Director

Enclosures

U.S. Department of Labor

Occupational Safety and Health Administration
1099 Winterson Road
Suite 140
Linthicum, MD 21090



Citation and Notification of Penalty

To:

CSX Transportation, Inc.
and its successors
500 Water Street, Attn: Brooke Martin, J275
Jacksonville, FL 32202

Inspection Number: 1572262

Inspection Date(s): 01/04/2022 - 01/11/2022

Issuance Date: 06/29/2022

Inspection Site:

1090 Benhill Avenue
Baltimore, MD 21226

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty (this Citation) describes violations of the Occupational Safety and Health Act of 1970. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties proposed, unless within 15 working days (excluding weekends and Federal holidays) from your receipt of this Citation and Notification of Penalty **you either call to schedule an informal conference (see paragraph below) or** you mail a notice of contest to the U.S. Department of Labor Area Office at the address shown above. Please refer to the enclosed booklet (OSHA 3000) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless this Citation is affirmed by the Review Commission or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and Federal holidays), whichever is longer.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Area Director during the 15 working day contest period by calling (410) 865-2055. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Area Director within 15 working days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the Notice to Employees next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Right to Contest – You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest proposed penalties and/or abatement dates without contesting the underlying violations. **Unless you inform the Area Director in writing that you intend to contest the citation(s) and/or proposed penalty(ies) within 15 working days after receipt, the citation(s) and the proposed penalty(ies) will become a final order of the Occupational Safety and Health Review Commission and may not be reviewed by any court or agency.**

Penalty Payment – Penalties are due within 15 working days of receipt of this notification unless contested. (See the enclosed booklet and the additional information provided related to the Debt Collection Act of 1982.) Make your check or money order payable to “DOL-OSHA”. Please indicate the Inspection Number on the remittance. You can also make your payment electronically at www.pay.gov. At the top of the [pay.gov](http://www.pay.gov) homepage, type "OSHA" in the Search field and select Search. From **OSHA Penalty Payment Form** search result, select Continue. The direct link is:

<https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=53090334>

You will be required to enter your inspection number when making the payment. Payments can be made by credit card or Automated Clearing House (ACH) using your banking information. Payments of \$25,000 or more require a Transaction ID, and also must be paid using ACH. If you require a Transaction ID, please contact the OSHA Debt Collection Team at (202) 693-2170.

OSHA does not agree to any restrictions or conditions or endorsements put on any check, money order, or electronic payment for less than the full amount due, and will process the payments as if these restrictions or conditions do not exist.

Notification of Corrective Action – For each violation which you do not contest, you must provide **abatement certification** to the Area Director of the OSHA office issuing the citation and identified above. This abatement certification is to be provided by letter within 10 calendar days after each abatement date. Abatement certification includes the date and method of abatement. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item. The abatement certification letter must be posted at the location where the violation appeared and the corrective action took place or employees must otherwise be effectively informed about abatement activities. A sample abatement certification letter is enclosed with this Citation. In addition, where the citation indicates that **abatement documentation** is necessary, evidence of the purchase or repair of equipment, photographs or video, receipts, training records, etc., verifying that abatement has occurred is required to be provided to the Area Director.

Employer Discrimination Unlawful – The law prohibits discrimination by an employer against an

employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 30 days after the discrimination occurred with the U.S. Department of Labor Area Office at the address shown above.

Employer Rights and Responsibilities – The enclosed booklet (OSHA 3000) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Notice to Employees – The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the U.S. Department of Labor Area Office at the address shown above and postmarked within 15 working days (excluding weekends and Federal holidays) of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data – You should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to these alleged violations will be posted when our system indicates that you have received this citation. You are encouraged to review the information concerning your establishment at www.osha.gov. If you have any dispute with the accuracy of the information displayed, please contact this office.



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with OSHA to discuss the citation(s) issued on 06/29/2022. The conference will be held by telephone or at the OSHA office located at 1099 Winterson Road, Suite 140, Linthicum, MD 21090 on _____ at _____.

_____. Employees and/or representatives of employees have a right to attend an informal conference.

CERTIFICATION OF CORRECTIVE ACTION WORKSHEET

Inspection Number: 1572262

Company Name: CSX Transportation, Inc.
Inspection Site: 1090 Benhill Avenue, Baltimore, MD 21226
Issuance Date: 06/29/2022

List the specific method of correction for each item on this citation in this package that does not read "Corrected During Inspection" and return to: **U.S. Department of Labor – Occupational Safety and Health Administration, 1099 Winterson Road, Suite 140, Linthicum, MD 21090.**

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

I certify that the information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement.

Signature

Date

Typed or Printed Name

Title

NOTE: 29 USC 666(g) whoever knowingly makes any false statements, representation or certification in any application, record, plan or other documents filed or required to be maintained pursuant to the Act shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment of not more than 6 months or both.

POSTING: A copy of completed Corrective Action Worksheet should be posted for employee review

The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury or illness.

Citation 1 Item 1 a Type of Violation: **Serious**

29 CFR 1910.134(a)(1): When effective engineering controls were not feasible or while they were being instituted, appropriate respirators were not used pursuant to the requirements of 29 CFR 1910.134:

a) North Tunnel and Northwest Escape Tunnel - Employees entered tunnels to perform work activities, including but not limited to unclogging blocked hatchway feeders and re-setting conveyor trip lines, where there was the potential for exposure to coal dust and respirators were not used, on or about 12/30/2021.

In accordance with 29 CFR 1903.19(d), abatement certification is required for this violation (using the Certification of Corrective Action Worksheet), in addition, documentation demonstrating the abatement is complete must be included with your certification. This documentation may include, but is not limited to evidence of the purchase or repair of the equipment, photographic or video evidence of abatement, or other written records.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:

July 19, 2022

Proposed Penalty:

\$11,396.00

Citation 1 Item 1 b Type of Violation: **Serious**

29 CFR 1917.23(d)(1): Designated persons entering a space containing a hazardous atmosphere were not protected by respiratory and emergency protective equipment meeting the requirements of 29 CFR 1917, Subpart E:

a) North Tunnel - Employees that entered the north tunnel where there was a potential for a hazardous atmosphere from coal dust or methane gas were not required to wear respiratory protection, on or about 12/30/2021.

In accordance with 29 CFR 1903.19(d), abatement certification is required for this violation (using the Certification of Corrective Action Worksheet), in addition, documentation demonstrating the abatement is complete must be included with your certification. This documentation may include, but is not limited to evidence of the purchase or repair of the equipment, photographic or video evidence of abatement, or other written records.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:

July 06, 2022

Proposed Penalty:

\$11,396.00

Citation 1 Item 2 Type of Violation: **Serious**

29 CFR 1910.134(c)(1): A written respiratory protection program that included the provisions in 29 CFR 1910.134(c)(1)(i) - (ix) with worksite specific procedures was not established and implemented for required respirator use:

a) North Tunnel - Employees entered into the tunnel to unclog a blocked coal hatchway feeder and were not wearing respiratory protection where there could be an overexposure to coal dust, and the employer had not developed a written respiratory protection program, on or about 12/30/2021.

In accordance with 29 CFR 1903.19(d), abatement certification is required for this violation (using the Certification of Corrective Action Worksheet), in addition, documentation demonstrating the abatement is complete must be included with your certification. This documentation may include, but is not limited to evidence of the purchase or repair of the equipment, photographic or video evidence of abatement, or other written records.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:

July 19, 2022

Proposed Penalty:

\$14,502.00

Citation 1 Item 3 Type of Violation: **Serious**

29 CFR 1910.307(b): Documentation for areas designated as hazardous (classified) locations under the Class and Zone system and areas designated under the Class and Division system established after August 13, 2007 was not available to those authorized to design, install, inspect, maintain, or operate electric equipment at the location:

a) North Tunnel and Northwest Escape Tunnel - The employer did not provide any documentation designating the areas within the coal terminal with the designated hazardous classified location, on or about 12/30/2021.

In accordance with 29 CFR 1903.19(d), abatement certification is required for this violation (using the Certification of Corrective Action Worksheet), in addition, documentation demonstrating the abatement is complete must be included with your certification. This documentation may include, but is not limited to evidence of the purchase or repair of the equipment, photographic or video evidence of abatement, or other written records.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:

July 19, 2022

Proposed Penalty:

\$14,502.00

The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury or illness.

Citation 1 Item 4 a Type of Violation: **Serious**

29 CFR 1910.307(c)(2)(i):Equipment in hazardous (classified) location(s) was not approved for the ignitable or combustible properties of the specific gas, vapor, dust, or fiber that was or could be present:

a) Northwest Escape Tunnel - Electrical equipment to include an electrical control panel was not approved for Class II Division 1 Location where coal transfer process operation was being performed, on or about 12/30/2021.

In accordance with 29 CFR 1903.19(d), abatement certification is required for this violation (using the Certification of Corrective Action Worksheet), in addition, documentation demonstrating the abatement is complete must be included with your certification. This documentation may include, but is not limited to evidence of the purchase or repair of the equipment, photographic or video evidence of abatement, or other written records.

Install intrinsically safe electrical equipment.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:

July 12, 2022

Proposed Penalty:

\$14,502.00

Citation 1 Item 4 b Type of Violation: **Serious**

29 CFR 1910.307(c)(3): Equipment was not safe for the location in that it was not of a type and design that the employer demonstrated would provide protection from the hazards arising from the combustibility and flammability of vapors, liquids, gases, dusts, or fibers involved:

a) Northwest Escape Tunnel - Electrical equipment, including a control panel, overhead lighting, an outlet and transformer that was installed was not explosion proof, on or about 12/30/2021.

In accordance with 29 CFR 1903.19(d), abatement certification is required for this violation (using the Certification of Corrective Action Worksheet), in addition, documentation demonstrating the abatement is complete must be included with your certification. This documentation may include, but is not limited to evidence of the purchase or repair of the equipment, photographic or video evidence of abatement, or other written records.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:
Proposed Penalty:

July 19, 2022
\$14,502.00

Citation 1 Item 5 Type of Violation: **Serious**

29 CFR 1917.23(b)(1):The employer did not ensure that a properly equipped designated person tested the atmosphere in rooms, buildings, vehicles, railcars, or other spaces that contains or had contained a hazardous atmosphere, prior to employee entry to determine whether a hazardous atmosphere existed:

a) North Tunnel - Air testing was not performed by a designated person prior to the employees entering the north tunnel to remove a blockage in the coal hatchway feeder, on or about 12/30/2021.

In accordance with 29 CFR 1903.19(d), abatement certification is required for this violation (using the Certification of Corrective Action Worksheet), in addition, documentation demonstrating the abatement is complete must be included with your certification. This documentation may include, but is not limited to evidence of the purchase or repair of the equipment, photographic or video evidence of abatement, or other written records.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:

July 06, 2022

Proposed Penalty:

\$14,502.00

Citation 1 Item 6 Type of Violation: **Serious**

29 CFR 1917.24(c): Tests for carbon monoxide concentration were not made by designated persons using gas detector tube units certified by NIOSH under 30 CFR Part 11 or other measuring instruments whose accuracy was as great or greater.

a) North Tunnel and NW Escape Tunnel - prior to making entry to clean the blocked hatchway of the feeders and the re-set the conveyor trip lines where coal was being transferred testing for carbon monoxide was not performed, on or about 12/30/2021.

In accordance with 29 CFR 1903.19(c), abatement certification is required for this violation (using the Certification of Corrective Action Worksheet).

Date By Which Violation Must be Abated:
Proposed Penalty:

July 08, 2022
\$11,396.00

Citation 1 Item 7 Type of Violation: **Serious**

29 CFR 1917.27(b)(1): Immediate supervisors of cargo handling operations of more than five persons did not satisfactorily complete an accident prevention course:

a) Coal Terminal - Supervisors that were responsible for cargo handling operations involving coal transfer were not provided with accident prevention training or courses, on or about 12/30/2021.

In accordance with 29 CFR 1903.19(d), abatement certification is required for this violation (using the Certification of Corrective Action Worksheet), in addition, documentation demonstrating the abatement is complete must be included with your certification. This documentation may include, but is not limited to evidence of the purchase or repair of the equipment, photographic or video evidence of abatement, or other written records.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:

July 19, 2022

Proposed Penalty:

\$14,502.00

Citation 2 Item 1 Type of Violation: **Other-than-Serious**

29 CFR 1917.24(d): A record of the date, time, location, and results of carbon monoxide tests were not available for at least 30 days:

a) North Tunnel and Northwest Escape Tunnel - where employees were required to make entry to clean the hatchway and reset the conveyor trip lines the employer failed to provide documentation that carbon monoxide testing was completed, on or about 12/30/2021.

In accordance with 29 CFR 1903.19(c), abatement certification is required for this violation (using the Certification of Corrective Action Worksheet).

Date By Which Violation Must be Abated:

July 08, 2022

Proposed Penalty:

\$0.00

Citation 2 Item 2 Type of Violation: **Other-than-Serious**

29 CFR 1917.30(a)(2)(ii): The emergency action plan did not include procedures to be followed by employees who remain to operate critical plant operations before they evacuate.

a) CSX Curtis Bay Coal Terminal - Employees working near the transfer tower to unclog the blocked hatchway feeders' employees exposed to coal dust and methane gas which are condition for explosion hazard. However, the employer failed to develop a site specific emergency action plan that would include procedures to be followed by employees responsible for plant operations, on or about 12/30/2021.

In accordance with 29 CFR 1903.19(c), abatement certification is required for this violation (using the Certification of Corrective Action Worksheet).

Date By Which Violation Must be Abated:

July 26, 2022

Proposed Penalty:

\$0.00



Nadira Janack
Area Director

U.S. Department of Labor
Occupational Safety and Health Administration
1099 Winterson Road
Suite 140
Linthicum, MD 21090



**INVOICE /
DEBT COLLECTION NOTICE**

Company Name: CSX Transportation, Inc.
Inspection Site: 1090 Benhill Avenue, Baltimore, MD 21226
Issuance Date: 06/29/2022

Summary of Penalties for Inspection Number: 1572262

Citation 1 Item 1a, Serious	\$11,396.00
Citation 1 Item 1b, Serious	\$11,396.00
Citation 1 Item 2, Serious	\$14,502.00
Citation 1 Item 3, Serious	\$14,502.00
Citation 1 Item 4a, Serious	\$14,502.00
Citation 1 Item 4b, Serious	\$14,502.00
Citation 1 Item 5, Serious	\$14,502.00
Citation 1 Item 6, Serious	\$11,396.00
Citation 1 Item 7, Serious	\$14,502.00
Citation 2 Item 1, Other-than-Serious	\$0.00
Citation 2 Item 2, Other-than-Serious	\$0.00

TOTAL PROPOSED PENALTIES: **\$121,200.00**

To avoid additional charges, please remit payment promptly to this Area Office for the total amount of the uncontested penalties summarized above. Make your check or money order payable to: "DOL-OSHA". Please indicate OSHA's Inspection Number (indicated above) on the remittance. You can also make your payment electronically at www.pay.gov. At the top of the pay.gov homepage, type "OSHA" in the Search field and select

Search. From the **OSHA Penalty Payment Form** search result, select Continue. The direct link is: <https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=53090334>. You will be required to enter your inspection number when making the payment. Payments can be made by credit card or Automated Clearing House (ACH) using your banking information. Payments of \$25,000 or more require a Transaction ID, and also must be paid using ACH. If you require a Transaction ID, please contact the OSHA Debt Collection Team at (202) 693-2170.

OSHA does not agree to any restrictions or conditions or endorsements put on any check, money order, or electronic payment for less than the full amount due, and will cash the check or money order as if these restrictions or conditions do not exist.

If a personal check is issued, it will be converted into an electronic fund transfer (EFT). This means that our bank will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will then usually occur within 24 hours and will be shown on your regular account statement. You will not receive your original check back. The bank will destroy your original check, but will keep a copy of it. If the EFT cannot be completed because of insufficient funds or closed account, the bank will attempt to make the transfer up to two times.

Pursuant to the Debt Collection Act of 1982 (Public Law 97-365) and regulations of the U.S. Department of Labor (29 CFR Part 20), the Occupational Safety and Health Administration is required to assess interest, delinquent charges, and administrative costs for the collection of delinquent penalty debts for violations of the Occupational Safety and Health Act.

Interest: Interest charges will be assessed at an annual rate determined by the Secretary of the Treasury on all penalty debt amounts not paid within one month (30 calendar days) of the date on which the debt amount becomes due and payable (penalty due date). The current interest rate is one percent (1%). Interest will accrue from the date on which the penalty amounts (as proposed or adjusted) become a final order of the Occupational Safety and Health Review Commission (that is, 15 working days from your receipt of the Citation and Notification of Penalty), unless you file a notice of contest. Interest charges will be waived if the full amount owed is paid within 30 calendar days of the final order.

Delinquent Charges: A debt is considered delinquent if it has not been paid within one month (30 calendar days) of the penalty due date or if a satisfactory payment arrangement has not been made. If the debt remains delinquent for more than 90 calendar days, a delinquent charge of six percent (6%) per annum will be assessed accruing from the date that the debt became delinquent.

Administrative Costs: Agencies of the Department of Labor are required to assess additional charges for the recovery of delinquent debts. These additional charges are administrative costs incurred by the Agency in its attempt to collect an unpaid debt. Administrative costs will be assessed for demand letters sent in an attempt to collect the unpaid debt.



Nadira Janack

Area Director

06/29/2022

Date

EXHIBIT 5

Maryland Department of the Environment
Sept. 9, 2024 Notice of Violation to CSX Transportation, Inc.



Maryland
Department of
the Environment

Wes Moore, Governor
Aruna Miller, Lt. Governor

Serena McIlwain, Secretary
Suzanne E. Dorsey, Deputy Secretary

(Correspondence via e-mail.)

September 9, 2024

Mr. Aleek Young, General Manager
CSX Transportation, Inc. – Curtis Bay Piers
1090 Benhill Ave
Baltimore, MD 21226

RE: Notice of Violation

Dear Mr. Young,

Enclosed please find a Notice of Violation (NOV) for violations of the Maryland Air Quality Act, Maryland Code, Environment Article, §2-101 et seq. The NOV is being issued in regard to the railroad track maintenance work being performed on September 5, 2024 at CSX's Curtis Bay Terminal.

If you have any questions, please contact me at roland.gorschboth@maryland.gov or phone 410-537-4130.

Sincerely,

Roland Gorschboth
Air Quality Compliance Program
Maryland Department of the Environment

cc: R. Hensley, CSX-Environmental Programs
R. Chatrathi, CSX-Environmental Programs
C. Hoagland, MDE-ARA Director
M. Strande, Maryland Office of the Attorney General

**State of Maryland
Department of the Environment**

Air and Radiation Administration
1800 Washington Boulevard, Suite 715
Baltimore, MD 21230-1720

**Notice of Violation
of Air Pollution Regulations**

Date of Notice: Sept. 9, 2024

Name of Responsible Person or Company: CSX Transportation Inc. – Curtis Bay Piers

Attention: Mr. Aleek Young, General Manager

Address: 1090 Benhill Ave Baltimore, MD 21226

County: Baltimore City

You are hereby notified that you have been observed to violate the Air Pollution Control Regulations of the State of Maryland.

The specific regulations violated are COMAR 26.11.02.05; COMAR 26.11.06.03.D; COMAR 26.11.06.08,
COMAR _____, and COMAR _____. The circumstances are as follows:

Date and Time of Occurrence: September 5, 2024 approximately 5:45 p.m. EST

Source of Pollution: Track repair work on CSX property

Description of Violation: CSX did violate or cause to be violated terms or conditions of a permit issued under
COMAR 26.11.03. CSX did cause or permit emissions without taking reasonable precautions to prevent particulate matter
from becoming airborne. CSX did operate in such a manner that a nuisance or air pollution was created.

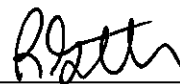
Description of Weather: Clear / Temperature- approximately 74 °F

Estimated Wind Speed: Approximately 8 mph mph; Direction: Easterly

Comments: On September 5, 2024 at 5:45 p.m. EST CSX – Curtis Bay Terminal was conducting track maintenance
work that resulted in the above cited violations.

You should take steps to prevent recurrence of this situation. Violations of the Maryland Air Quality Act, Maryland Code, Environment Article, §2-101 et seq., and the regulations adopted under the Act are subject to civil penalties of up to \$25,000 for each day of violation and to criminal penalties. See Environment Article, Title 2, Subtitle 6.

If you have any questions about this Notice, please contact me.



Name of Inspector

410-537-4130

Telephone Number

EXHIBIT 6

Mettiki Coal, LLC Part 70 Operating Permit No. 24-023-0042

KEEP PERMIT AT SITE

AI # 3511

CONTROL NO. B - 06294

State of



Maryland

Lawrence J. Hogan, Jr.
Governor

Ben Grumbles
Secretary

Boyd K. Rutherford
Lt. Governor

DEPARTMENT OF THE ENVIRONMENT

Air and Radiation Administration
1800 Washington Boulevard, Suite 720
Baltimore, MD 21230

☐ Construction Permit

☒ Part 70 Operating Permit

PERMIT NO. 24-023-0042

DATE ISSUED January 1, 2018

PERMIT FEE To be paid in accordance
with COMAR 26.11.02.19B

EXPIRATION DATE December 31, 2022

LEGAL OWNER & ADDRESS

Mettiki Coal, LLC
293 Table Rock Rd
Oakland, Maryland 21550

Attention: Mr. Aaron Miller,
Environmental Coordinator

SITE

Mettiki Coal, LLC
293 Table Rock Rd
Oakland, MD 21550
AI # 3511

SOURCE DESCRIPTION

One Bituminous Coal Processing Plant

This source is subject to the conditions described on the attached pages.

Page 1 of 5

Program Manager

Director, Air and Radiation Administration

MDE/ARMA/PER.009 (REV. 10-08-03)

(NOT TRANSFERABLE)

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

SECTION I	SOURCE IDENTIFICATION	4
1.	DESCRIPTION OF FACILITY	4
2.	FACILITY INVENTORY LIST	4
SECTION II	GENERAL CONDITIONS	5
1.	DEFINITIONS	5
2.	ACRONYMS	5
3.	EFFECTIVE DATE	6
4.	PERMIT EXPIRATION	6
5.	PERMIT RENEWAL	6
6.	CONFIDENTIAL INFORMATION	7
7.	PERMIT ACTIONS	7
8.	PERMIT AVAILABILITY	8
9.	REOPENING THE PART 70 PERMIT FOR CAUSE BY THE EPA	8
10.	TRANSFER OF PERMIT	8
11.	REVISION OF PART 70 PERMITS – GENERAL CONDITIONS	8
12.	SIGNIFICANT PART 70 OPERATING PERMIT MODIFICATIONS	9
13.	MINOR PERMIT MODIFICATIONS	10
14.	ADMINISTRATIVE PART 70 OPERATING PERMIT AMENDMENTS	13
15.	OFF-PERMIT CHANGES TO THIS SOURCE	14
16.	ON-PERMIT CHANGES TO SOURCES	16
17.	FEE PAYMENT	18
18.	REQUIREMENTS FOR PERMITS-TO-CONSTRUCT AND APPROVALS	18
19.	CONSOLIDATION OF PROCEDURES FOR PUBLIC PARTICIPATION	19
20.	PROPERTY RIGHTS	19
21.	SEVERABILITY	20
22.	INSPECTION AND ENTRY	20
23.	DUTY TO PROVIDE INFORMATION	20
24.	COMPLIANCE REQUIREMENTS	21
25.	CREDIBLE EVIDENCE	21
26.	NEED TO HALT OR REDUCE ACTIVITY NOT A DEFENSE	22
27.	CIRCUMVENTION	22
28.	PERMIT SHIELD	22
29.	ALTERNATE OPERATING SCENARIOS	23
SECTION III	PLANT WIDE CONDITIONS	24
1.	PARTICULATE MATTER FROM CONSTRUCTION AND DEMOLITION	24
2.	OPEN BURNING	24
3.	AIR POLLUTION EPISODE	24
4.	REPORT OF EXCESS EMISSIONS AND DEVIATIONS	24
5.	ACCIDENTAL RELEASE PROVISIONS	25
6.	GENERAL TESTING REQUIREMENTS	26
7.	EMISSIONS TEST METHODS	26
8.	EMISSIONS CERTIFICATION REPORT	27
9.	COMPLIANCE CERTIFICATION REPORT	28
10.	CERTIFICATION BY RESPONSIBLE OFFICIAL	28
11.	SAMPLING AND EMISSIONS TESTING RECORD KEEPING	29

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

12.	GENERAL RECORDKEEPING	30
13.	GENERAL CONFORMITY	30
14.	ASBESTOS PROVISIONS	30
15.	OZONE DEPLETING REGULATIONS	31
16.	ACID RAIN PERMIT	31
SECTION IV PLANT SPECIFIC CONDITIONS		32
COMPLIANCE ASSURANCE MONITORING (CAM) [REFERENCE: 40 CFR PART 64]		
44		
COMPLIANCE ASSURANCE MONITORING (CAM) [REFERENCE: 40 CFR PART 64]		
47		
SECTION V	INSIGNIFICANT ACTIVITIES	49
SECTION VI	STATE-ONLY ENFORCEABLE CONDITIONS.....	50

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

SECTION I SOURCE IDENTIFICATION

1. DESCRIPTION OF FACILITY

Mettiki operates a coal cleaning/preparation operation with a thermal dryer and a shipping/receiving operation at the Oakland location. Raw coal from the Mettiki mine located in West Virginia is trucked to the Oakland facility where it is off-loaded. The SIC code for this facility is 1241.

Mettiki has been in operation at this location since 1977, having originally produced a low-volatile metallurgical coal product for sale primarily to Japanese steel mills. Currently, the plant produces steam grade coal for sale primarily to domestic utilities in Maryland and West Virginia.

Mettiki was originally made up of four separate mine portals, all in Maryland: A Mine, B Mine, C Mine, and D Mine. The Maryland mines have ceased operations, running out of mineable reserves in the first quarter of 2007. Mettiki's A Mine closed prior to 1985. Mettiki's "B" and "C" Mines were closed in 1985 and 1987, respectively. Mettiki opened the "E" Mine in West Virginia in July 2005 in anticipation of the closure of the D Mine in 2007; coal from the E Mine is trucked to the Oakland Maryland plant for processing. Mettiki currently mines all of its coal from the E Mine in West Virginia.

2. FACILITY INVENTORY LIST

Emissions Unit Number	MDE Registration Number	Emissions Unit Name and Description	Date of Installation
EU 1	023-0042-9-0009	Thermal Dryer	1977
EU 2	023-0042-9-0009	Coal Handling System	1977 Mod. 9/2005 & 10/2006
EU 3	023-0042-9-0029	6000 Gallon Gasoline storage tank	1978

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

SECTION II GENERAL CONDITIONS

1. DEFINITIONS

[COMAR 26.11.01.01] and [COMAR 26.11.02.01]

The words or terms in this Part 70 permit shall have the meanings established under COMAR 26.11.01 and .02 unless otherwise stated in this permit.

2. ACRONYMS

ARA	Air and Radiation Administration
BACT	Best Available Control Technology
Btu	British thermal unit
CAA	Clean Air Act
CAM	Compliance Assurance Monitoring
CEM	Continuous Emissions Monitor
CFR	Code of Federal Regulations
CO	Carbon Monoxide
COMAR	Code of Maryland Regulations
EPA	United States Environmental Protection Agency
FR	Federal Register
gr	grains
HAP	Hazardous Air Pollutant
MACT	Maximum Achievable Control Technology
MDE	Maryland Department of the Environment
MVAC	Motor Vehicle Air Conditioner
NESHAPS	National Emission Standards for Hazardous Air Pollutants
NO _x	Nitrogen Oxides
NSPS	New Source Performance Standards
NSR	New Source Review
OTR	Ozone Transport Region
PM	Particulate Matter
PM10	Particulate Matter with Nominal Aerodynamic Diameter of 10 micrometers or less
ppm	parts per million
ppb	parts per billion
PSD	Prevention of Significant Deterioration
PTC	Permit to construct
PTO	Permit to operate (State)
SIC	Standard Industrial Classification
SO ₂	Sulfur Dioxide

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

TAP	Toxic Air Pollutant
tpy	tons per year
VE	Visible Emissions
VOC	Volatile Organic Compounds

3. EFFECTIVE DATE

The effective date of the conditions in this Part 70 permit is the date of permit issuance, unless otherwise stated in the permit.

4. PERMIT EXPIRATION

[COMAR 26.11.03.13B(2)]

Upon expiration of this permit, the terms of the permit will automatically continue to remain in effect until a new Part 70 permit is issued for this facility provided that the Permittee has submitted a timely and complete application and has paid applicable fees under COMAR 26.11.02.16.

Otherwise, upon expiration of this permit the right of the Permittee to operate this facility is terminated.

5. PERMIT RENEWAL

[COMAR 26.11.03.02B(3)] and [COMAR 26.11.03.02E]

The Permittee shall submit to the Department a completed application for renewal of this Part 70 permit at least 12 months before the expiration of the permit. Upon submitting a completed application, the Permittee may continue to operate this facility pending final action by the Department on the renewal.

The Permittee, upon becoming aware that any relevant facts were omitted or incorrect information was submitted in the permit application, shall submit such supplementary facts or corrected information no later than 10 days after becoming aware that this occurred. The Permittee shall also provide additional information as necessary to address any requirements that become applicable to the facility after the date a completed application was submitted, but prior to the release of a draft permit. This information shall be submitted to the Department no later than 20 days after a new requirement has been adopted.

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

6. CONFIDENTIAL INFORMATION

[COMAR 26.11.02.02G]

In accordance with the provisions of the State Government Article, Sec. 10-611 et seq., Annotated Code of Maryland, all information submitted in an application shall be considered part of the public record and available for inspection and copying, unless the Permittee claims that the information is confidential when it is submitted to the Department. At the time of the request for inspection or copying, the Department will make a determination with regard to the confidentiality of the information. The Permittee, when requesting confidentiality, shall identify the information in a manner specified by the Department and, when requested by the Department, promptly provide specific reasons supporting the claim of confidentiality. Information submitted to the Department without a request that the information be deemed confidential may be made available to the public. Subject to approval of the Department, the Permittee may provide a summary of confidential information that is suitable for public review. The content of this Part 70 permit is not subject to confidential treatment.

7. PERMIT ACTIONS

[COMAR 26.11.03.06E(3)] and [COMAR 26.11.03.20(A)]

This Part 70 permit may be revoked or reopened and revised for cause. The filing of an application by the Permittee for a permit revision or renewal; or a notification of termination, planned changes or anticipated noncompliance by the facility, does not stay a term or condition of this permit.

The Department shall reopen and revise, or revoke the Permittee's Part 70 permit under the following circumstances:

- a. Additional requirements of the Clean Air Act become applicable to this facility and the remaining permit term is 3 years or more;
- b. The Department or the EPA determines that this Part 70 permit contains a material mistake, or is based on false or inaccurate information supplied by or on behalf of the Permittee;
- c. The Department or the EPA determines that this Part 70 permit must be revised or revoked to assure compliance with applicable requirements of the Clean Air Act; or

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

- d. Additional requirements become applicable to an affected source under the Federal Acid Rain Program.

8. PERMIT AVAILABILITY

[COMAR 26.11.02.13G]

The Permittee shall maintain this Part 70 permit in the vicinity of the facility for which it was issued, unless it is not practical to do so, and make this permit immediately available to officials of the Department upon request.

9. REOPENING THE PART 70 PERMIT FOR CAUSE BY THE EPA

[COMAR 26.11.03.20B]

The EPA may terminate, modify, or revoke and reissue a permit for cause as prescribed in 40 CFR §70.7(g)

10. TRANSFER OF PERMIT

[COMAR 26.11.02.02E]

The Permittee shall not transfer this Part 70 permit except as provided in COMAR 26.11.03.15.

11. REVISION OF PART 70 PERMITS – GENERAL CONDITIONS

[COMAR 26.11.03.14] and [COMAR 26.11.03.06A(8)]

- a. The Permittee shall submit an application to the Department to revise this Part 70 permit when required under COMAR 26.11.03.15 -.17.
- b. When applying for a revision to a Part 70 permit, the Permittee shall comply with the requirements of COMAR 26.11.03.02 and .03 except that the application for a revision need include only information listed that is related to the proposed change to the source and revision to the permit. This information shall be sufficient to evaluate the proposed change and to determine whether it will comply with all applicable requirements of the Clean Air Act.

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

- c. The Permittee may not change any provision of a compliance plan or schedule in a Part 70 permit as an administrative permit amendment or as a minor permit modification unless the change has been approved by the Department in writing.
- d. A permit revision is not required for a change that is provided for in this permit relating to approved economic incentives, marketable permits, emissions trading, and other similar programs.

12. SIGNIFICANT PART 70 OPERATING PERMIT MODIFICATIONS

[COMAR 26.11.03.17]

The Permittee may apply to the Department to make a significant modification to its Part 70 Permit as provided in COMAR 26.11.03.17 and in accordance with the following conditions:

- a. A significant modification is a revision to the federally enforceable provisions in the permit that does not qualify as an administrative permit amendment under COMAR 26.11.03.15 or a minor permit modification as defined under COMAR 26.11.03.16.
- b. This permit does not preclude the Permittee from making changes, consistent with the provisions of COMAR 26.11.03, that would make the permit or particular terms and conditions of the permit irrelevant, such as by shutting down or reducing the level of operation of a source or of an emissions unit within the source. Air pollution control equipment shall not be shut down or its level of operation reduced if doing so would violate any term of this permit.
- c. Significant permit modifications are subject to all requirements of COMAR 26.11.03 as they apply to permit issuance and renewal, including the requirements for applications, public participation, and review by affected states and EPA, except:
 - (1) An application need include only information pertaining to the proposed change to the source and modification of this permit, including a description of the change and modification, and any new applicable requirements of the Clean Air Act that will apply if the change occurs;

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

- (2) Public participation, and review by affected states and EPA, is limited to only the application and those federally enforceable terms and conditions of the Part 70 permit that are affected by the significant permit modification.
- d. As provided in COMAR 26.11.03.15B(5), an administrative permit amendment may be used to make a change that would otherwise require a significant permit modification if procedures for enhanced preconstruction review of the change are followed that satisfy the requirements of 40 CFR 70.7(d)(1)(v).
- e. Before making a change that qualifies as a significant permit modification, the Permittee shall obtain all permits-to-construct and approvals required by COMAR 26.11.02.
- f. The Permittee shall not make a significant permit modification that results in a violation of any applicable requirement of the Clean Air Act.
- g. The permit shield in COMAR 26.11.03.23 applies to a final significant permit modification that has been issued by the Department, to the extent applicable under COMAR 26.11.03.23.

13. MINOR PERMIT MODIFICATIONS

[COMAR 26.11.03.16]

The Permittee may apply to the Department to make a minor modification to the federally enforceable provisions of this Part 70 permit as provided in COMAR 26.11.03.16 and in accordance with the following conditions:

- a. A minor permit modification is a Part 70 permit revision that:
 - (1) Does not result in a violation of any applicable requirement of the Clean Air Act;
 - (2) Does not significantly revise existing federally enforceable monitoring, including test methods, reporting, record keeping, or compliance certification requirements except by:
 - (a) Adding new requirements,

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

- (b) Eliminating the requirements if they are rendered meaningless because the emissions to which the requirements apply will no longer occur, or
 - (c) Changing from one approved test method for a pollutant and source category to another;
 - (3) Does not require or modify a:
 - (a) Case-by-case determination of a federally enforceable emissions standard,
 - (b) Source specific determination for temporary sources of ambient impacts, or
 - (c) Visibility or increment analysis;
 - (4) Does not seek to establish or modify a federally enforceable permit term or condition for which there is no corresponding underlying applicable requirement of the Clean Air Act, but that the Permittee has assumed to avoid an applicable requirement to which the source would otherwise be subject, including:
 - (a) A federally enforceable emissions standard applied to the source pursuant to COMAR 26.11.02.03 to avoid classification as a Title I modification; and
 - (b) An alternative emissions standard applied to an emissions unit pursuant to regulations promulgated under Section 112(i)(5) of the Clean Air Act
 - (5) Is not a Title I modification; and
 - (6) Is not required under COMAR 26.11.03.17 to be processed as a significant modification to this Part 70 permit.
- b. Application for a Minor Permit Modification

The Permittee shall submit to the Department an application for a minor permit modification that satisfies the requirements of COMAR 26.11.03.03 which includes the following:

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

- (1) A description of the proposed change, the emissions resulting from the change, and any new applicable requirements that will apply if the change is made;
 - (2) The proposed minor permit modification;
 - (3) Certification by a responsible official, in accordance with COMAR 26.11.02.02F, that:
 - (a) The proposed change meets the criteria for a minor permit modification, and
 - (b) The Permittee has obtained or applied for all required permits-to-construct required by COMAR 26.11.03.16 with respect to the proposed change;
 - (4) Completed forms for the Department to use to notify the EPA and affected states, as required by COMAR 26.11.03.07-.12.
- c. Permittee's Ability to Make Change
- (1) For changes proposed as minor permit modifications to this permit that will require the applicant to obtain a permit to construct, the permit to construct must be issued prior to the new change.
 - (2) During the period of time after the Permittee applies for a minor modification but before the Department acts in accordance with COMAR 26.11.03.16F(2):
 - (a) The Permittee shall comply with applicable requirements of the Clean Air Act related to the change and the permit terms and conditions described in the application for the minor modification.
 - (b) The Permittee is not required to comply with the terms and conditions in the permit it seeks to modify. If the Permittee fails to comply with the terms and conditions in the application during this time, the terms and conditions of both this permit and the application for modification may be enforced against it.

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

- d. The Permittee is subject to enforcement action if it is determined at any time that a change made under COMAR 26.11.03.16 is not within the scope of this regulation.
- e. Minor permit modification procedures may be used for Part 70 permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, but only to the extent that the minor permit modification procedures are explicitly provided for in regulations approved by the EPA as part of the Maryland SIP or in other applicable requirements of the Clean Air Act.

14. ADMINISTRATIVE PART 70 OPERATING PERMIT AMENDMENTS

[COMAR 26.11.03.15]

The Permittee may apply to the department to make an administrative permit amendment as provided in COMAR 26.11.03.15 and in accordance with the following conditions:

- a. An application for an administrative permit amendment shall:
 - (1) Be in writing;
 - (2) Include a statement certified by a responsible official that the proposed amendment meets the criteria in COMAR 26.11.03.15 for an administrative permit amendment, and
 - (3) Identify those provisions of this part 70 permit for which the amendment is requested, including the basis for the request.
- b. An administrative permit amendment:
 - (1) Is a correction of a typographical error;
 - (2) Identifies a change in the name, address, or phone number of a person identified in this permit, or a similar administrative change involving the Permittee or other matters which are not directly related to the control of air pollution;
 - (3) requires more frequent monitoring or reporting by the Permittee;
 - (4) Allows for a change in ownership or operational control of a source for which the Department determines that no other

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

revision to the permit is necessary and is documented as per COMAR 26.11.03.15B(4);

- (5) Incorporates into this permit the requirements from preconstruction review permits or approvals issued by the Department in accordance with COMAR 26.11.03.15B(5), but only if it satisfies 40 CFR 70.7(d)(1)(v);
 - (6) Incorporates any other type of change, as approved by the EPA, which is similar to those in COMAR 26.11.03.15B(1)—(4);
 - (7) Notwithstanding COMAR 26.11.03.15B(1)—(6), all modifications to acid rain control provisions included in this Part 70 permit are governed by applicable requirements promulgated under Title IV of the Clean Air Act; or
 - (8) Incorporates any change to a term or condition specified as State-only enforceable, if the Permittee has obtained all necessary permits-to-construct and approvals that apply to the change.
- c. The Permittee may make the change addressed in the application for an administrative amendment upon receipt by the Department of the application, if all permits-to-construct or approvals otherwise required by COMAR 26.11.02 prior to making the change have first been obtained from the Department.
 - d. The permit shield in COMAR 26.11.03.23 applies to administrative permit amendments made under Section B(5) of COMAR 26.11.03.15 , but only after the Department takes final action to revise the permit.
 - e. The Permittee is subject to enforcement action if it is determined at any time that a change made under COMAR 26.11.03.15 is not within the scope of this regulation.

15. OFF-PERMIT CHANGES TO THIS SOURCE

[COMAR 26.11.03.19]

The Permittee may make off-permit changes to this facility as provided in COMAR 26.11.03.19 and in accordance with the following conditions:

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

- a. The Permittee may make a change to this permitted facility that is not addressed or prohibited by the federally enforceable conditions of this Part 70 permit without obtaining a Part 70 permit revision if:
 - (1) The Permittee has obtained all permits and approvals required by COMAR 26.11.02 and .03;
 - (2) The change is not subject to any requirements under Title IV of the Clean Air Act;
 - (3) The change is not a Title I modification; and
 - (4) The change does not violate an applicable requirement of the Clean Air Act or a federally enforceable term or condition of the permit.
- b. For a change that qualifies under COMAR 26.11.03.19, the Permittee shall provide contemporaneous written notice to the Department and the EPA, except for a change to an emissions unit or activity that is exempt from the Part 70 permit application, as provided in COMAR 26.11.03.04. This written notice shall describe the change, including the date it was made, any change in emissions, including the pollutants emitted, and any new applicable requirements of the Clean Air Act that apply as a result of the change.
- c. Upon satisfying the requirements of COMAR 26.11.03.19, the Permittee may make the proposed change.
- d. The Permittee shall keep a record describing:
 - (1) Changes made at the facility that result in emissions of a regulated air pollutant subject to an applicable requirement of the Clean Air Act , but not otherwise regulated under this permit; and
 - (2) The emissions resulting from those changes.
- e. Changes that qualify under COMAR 26.11.03.19 are not subject to the requirements for Part 70 revisions.
- f. The Permittee shall include each off-permit change under COMAR 26.11.03.19 in the application for renewal of the part 70 permit.

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

- g. The permit shield in COMAR 26.11.03.23 does not apply to off-permit changes made under COMAR 26.11.03.19.
- h. The Permittee is subject to enforcement action if it is determined that an off-permit change made under COMAR 26.11.03.19 is not within the scope of this regulation.

16. ON-PERMIT CHANGES TO SOURCES

[COMAR 26.11.03.18]

The Permittee may make on-permit changes that are allowed under Section 502(b)(10) of the Clean Air Act as provided in COMAR 26.11.03.18 and in accordance with the following conditions:

- a. The Permittee may make a change to this facility without obtaining a revision to this Part 70 permit if:
 - (1) The change is not a Title I modification;
 - (2) The change does not result in emissions in excess of those expressly allowed under the federally enforceable provisions of the Part 70 permit for the permitted facility or for an emissions unit within the facility, whether expressed as a rate of emissions or in terms of total emissions;
 - (3) The Permittee has obtained all permits and approvals required by COMAR 26.11.02 and .03;
 - (4) The change does not violate an applicable requirement of the Clean Air Act;
 - (5) The change does not violate a federally enforceable permit term or condition related to monitoring, including test methods, record keeping, reporting, or compliance certification requirements;
 - (6) The change does not violate a federally enforceable permit term or condition limiting hours of operation, work practices, fuel usage, raw material usage, or production levels if the term or condition has been established to limit emissions allowable under this permit;

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

- (7) If applicable, the change does not modify a federally enforceable provision of a compliance plan or schedule in this Part 70 permit unless the Department has approved the change in writing; and
 - (8) This permit does not expressly prohibit the change under COMAR 26.11.03.18.
- b. The Permittee shall notify the Department and the EPA in writing of a proposed on-permit change under COMAR 26.11.03.18 not later than 7 days before the change is made. The written information shall include the following information:
 - (1) A description of the proposed change;
 - (2) The date on which the change is proposed to be made;
 - (3) Any change in emissions resulting from the change, including the pollutants emitted;
 - (4) Any new applicable requirement of the Clean Air Act; and
 - (5) Any permit term or condition that would no longer apply.
- c. The responsible official of this facility shall certify in accordance with COMAR 26.11.02.02F that the proposed change meets the criteria for the use of on-permit changes under COMAR 26.11.03.18.
- d. The Permittee shall attach a copy of each notice required by condition b. above to this Part 70 permit.
- e. On-permit changes that qualify under COMAR 26.11.03.18 are not subject to the requirements for part 70 permit revisions.
- f. Upon satisfying the requirements under COMAR 26.11.03.18, the Permittee may make the proposed change.
- g. The permit shield in COMAR 26.11.03.23 does not apply to on-permit changes under COMAR 26.11.03.18.
- h. The Permittee is subject to enforcement action if it is determined that an on-permit change made under COMAR 26.11.03.18 is not within the scope of the regulation or violates any requirement of the State air pollution control law.

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

17. FEE PAYMENT

[COMAR 26.11.02.16A(2) & (5)(b)]

- a. The fee for this Part 70 permit is as prescribed in Regulation .19 of COMAR 26.11.02.
- b. The fee is due on and shall be paid on or before each 12-month anniversary date of the permit.
- c. Failure to pay the annual permit fee constitutes cause for revocation of the permit by the Department.

18. REQUIREMENTS FOR PERMITS-TO-CONSTRUCT AND APPROVALS

[COMAR 26.11.02.09.]

The Permittee may not construct or modify or cause to be constructed or modified any of the following sources without first obtaining, and having in current effect, the specified permits-to-construct and approvals:

- a. New Source Review source, as defined in COMAR 26.11.01.01, approval required, except for generating stations constructed by electric companies;
- b. Prevention of Significant Deterioration source, as defined in COMAR 26.11.01.01, approval required, except for generating stations constructed by electric companies;
- c. New Source Performance Standard source, as defined in COMAR 26.11.01.01, permit to construct required, except for generating stations constructed by electric companies;
- d. National Emission Standards for Hazardous Air Pollutants source, as defined in COMAR 26.11.01.01, permit to construct required, except for generating stations constructed by electric companies;
- e. A stationary source of lead that discharges one ton per year or more of lead or lead compounds measured as elemental lead, permit to construct required, except for generating stations constructed by electric companies;

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

- f. All stationary sources of air pollution, including installations and air pollution control equipment, except as listed in COMAR 26.11.02.10, permit to construct required;
- g. In the event of a conflict between the applicability of (a.— e.) above and an exemption listed in COMAR 26.11.02.10, the provision that requires a permit applies.
- h. Approval of a PSD or NSR source by the Department does not relieve the Permittee obtaining an approval from also obtaining all permits-to-construct required by (c.— g.) above.

19. CONSOLIDATION OF PROCEDURES FOR PUBLIC PARTICIPATION

[COMAR 26.11.02.11C] and [COMAR 26.11.03.01K]

The Permittee may request the Department to authorize special procedures for the Permittee to apply simultaneously, to the extent possible, for a permit to construct and a revision to this permit.

These procedures may provide for combined public notices, informational meetings, and public hearings for both permits but shall not adversely affect the rights of a person, including EPA and affected states, to obtain information about the application for a permit, to comment on an application, or to challenge a permit that is issued.

These procedures shall not alter any existing permit procedures or time frames.

20. PROPERTY RIGHTS

[COMAR 26.11.03.06E(4)]

This Part 70 permit does not convey any property rights of any sort, or any exclusive privileges.

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

21. SEVERABILITY

[COMAR 26.11.03.06A(5)]

If any portion of this Part 70 permit is challenged, or any term or condition deemed unenforceable, the remainder of the requirements of the permit continues to be valid.

22. INSPECTION AND ENTRY

[COMAR 26.11.03.06G(3)]

The Permittee shall allow employees and authorized representatives of the Department, the EPA, and local environmental health agencies, upon presentation of credentials or other documents as may be required by law, to:

- a. Enter at a reasonable time without delay and without prior notification the Permittee's property where a Part 70 source is located, emissions-related activity is conducted, or records required by this permit are kept;
- b. Have access to and make copies of records required by the permit;
- c. Inspect all emissions units within the facility subject to the permit and all related monitoring systems, air pollution control equipment, and practices or operations regulated or required by the permit; and
- d. Sample or monitor any substances or parameters at or related to the emissions units at the facility for the purpose of determining compliance with the permit.

23. DUTY TO PROVIDE INFORMATION

[COMAR 26.11.03.06E(5)]

The Permittee shall furnish to the Department, within a reasonable time specified by the Department, information requested in writing by the Department in order to determine whether the Permittee is in compliance with the federally enforceable conditions of this Part 70 permit, or whether cause exists for revising or revoking the permit. Upon request, the

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

Permittee shall also furnish to the Department records required to be kept under the permit.

For information claimed by the Permittee to be confidential and therefore potentially not discloseable to the public, the Department may require the Permittee to provide a copy of the records directly to the EPA along with a claim of confidentiality.

The Permittee shall also furnish to the Department, within a reasonable time specified by the Department, information or records requested in writing by the Department in order to determine if the Permittee is in compliance with the State-only enforceable conditions of this permit.

24. COMPLIANCE REQUIREMENTS

[COMAR 26.11.03.06E(1)] and [COMAR 26.11.03.06A(11)] and [COMAR 26.11.02.05]

The Permittee shall comply with the conditions of this Part 70 permit. Noncompliance with the permit constitutes a violation of the Clean Air Act, and/or the Environment Article Title 2 of the Annotated Code of Maryland and may subject the Permittee to:

- a. Enforcement action,
- b. Permit revocation or revision,
- c. Denial of the renewal of a Part 70 permit, or
- d. Any combination of these actions.

The conditions in this Part 70 permit are enforceable by EPA and citizens under the Clean Air Act except for the State-only enforceable conditions.

Under Environment Article Section 2-609, Annotated Code of Maryland, the Department may seek immediate injunctive relief against a person who violates this permit in such a manner as to cause a threat to human health or the environment.

25. CREDIBLE EVIDENCE

Nothing in this permit shall be interpreted to preclude the use of credible evidence to demonstrate noncompliance with any term of this permit.

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

26. NEED TO HALT OR REDUCE ACTIVITY NOT A DEFENSE

[COMAR 26.11.03.06E(2)]

The need to halt or reduce activity in order to comply with the conditions of this permit may not be used as a defense in an enforcement action.

27. CIRCUMVENTION

[COMAR 26.11.01.06]

The Permittee may not install or use any article, machine, equipment or other contrivance, the use of which, without resulting in a reduction in the total weight of emissions, conceals or dilutes emissions which would otherwise constitute a violation of any applicable air pollution control regulation.

28. PERMIT SHIELD

[COMAR 26.11.03.23]

A permit shield as described in COMAR 26.11.03.23 shall apply only to terms and conditions in this Part 70 permit that have been specifically identified as covered by the permit shield. Neither this permit nor COMAR 26.11.03.23 alters the following:

- a. The emergency order provisions in Section 303 of the Clean Air Act, including the authority of EPA under that section;
- b. The liability of the Permittee for a violation of an applicable requirement of the Clean Air Act before or when this permit is issued or for a violation that continues after issuance;
- c. The requirements of the Acid Rain Program, consistent with Section 408(a) of the Clean Air Act;
- d. The ability of the Department or EPA to obtain information from a source pursuant to Maryland law and Section 114 of the Clean Air Act; or

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

- e. The authority of the Department to enforce an applicable requirement of the State air pollution control law that is not an applicable requirement of the Clean Air Act.

29. ALTERNATE OPERATING SCENARIOS

[COMAR 26.11.03.06A(9)]

For all alternate operating scenarios approved by the Department and contained within this permit, the Permittee, while changing from one approved scenario to another, shall contemporaneously record in a log maintained at the facility each scenario under which the emissions unit is operating and the date and time the scenario started and ended.

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

SECTION III PLANT WIDE CONDITIONS

1. PARTICULATE MATTER FROM CONSTRUCTION AND DEMOLITION

[COMAR 26.11.06.03D]

The Permittee shall not cause or permit any building, its appurtenances, or a road to be used, constructed, altered, repaired, or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne.

2. OPEN BURNING

[COMAR 26.11.07]

Except as provided in COMAR 26.11.07.04, the Permittee shall not cause or permit an open fire from June 1 through August 31 of any calendar year. Prior to any open burning, the Permittee shall request and receive approval from the Department.

3. AIR POLLUTION EPISODE

[COMAR 26.11.05.04]

When requested by the Department, the Permittee shall prepare in writing standby emissions reduction plans, consistent with good industrial practice and safe operating procedures, for reducing emissions creating air pollution during periods of Alert, Warning, and Emergency of an air pollution episode.

4. REPORT OF EXCESS EMISSIONS AND DEVIATIONS

[COMAR 26.11.01.07] and [COMAR 26.11.03.06C(7)]

The Permittee shall comply with the following conditions for occurrences of excess emissions and deviations from requirements of this permit, including those in Section VI – State-only Enforceable Conditions:

- a. Report any deviation from permit requirements that could endanger human health or the environment, by orally notifying the Department immediately upon discovery of the deviation;

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

- b. Promptly report all occurrences of excess emissions that are expected to last for one hour or longer by orally notifying the Department of the onset and termination of the occurrence;
- c. When requested by the Department the Permittee shall report all deviations from permit conditions, including those attributed to malfunctions as defined in COMAR 26.11.01.07A, within 5 days of the request by submitting a written description of the deviation to the Department. The written report shall include the cause, dates and times of the onset and termination of the deviation, and an account of all actions planned or taken to reduce, eliminate, and prevent recurrence of the deviation;
- d. The Permittee shall submit to the Department semi-annual monitoring reports that confirm that all required monitoring was performed, and that provide accounts of all deviations from permit requirements that occurred during the reporting periods. Reporting periods shall be January 1 through June 30 and July 1 through December 31, and reports shall be submitted within 30 days of the end of each reporting period. Each account of deviation shall include a description of the deviation, the dates and times of onset and termination, identification of the person who observed or discovered the deviation, causes and corrective actions taken, and actions taken to prevent recurrence. If no deviations from permit conditions occurred during a reporting period, the Permittee shall submit a written report that so states.
- e. When requested by the Department, the Permittee shall submit a written report to the Department within 10 days of receiving the request concerning an occurrence of excess emissions. The report shall contain the information required in COMAR 26.11.01.07D(2).

5. ACCIDENTAL RELEASE PROVISIONS

[COMAR 26.11.03.03B(23)] and [40 CFR 68]

Should the Permittee become subject to 40 CFR 68 during the term of this permit, the Permittee shall submit risk management plans by the date specified in 40 CFR 68.150 and shall certify compliance with the requirements of 40 CFR 68 as part of the annual compliance certification as required by 40 CFR 70.

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

The Permittee shall initiate a permit revision or reopening according to the procedures of 40 CFR 70.7 to incorporate appropriate permit conditions into the Permittee's Part 70 permit.

6. GENERAL TESTING REQUIREMENTS

[COMAR 26.11.01.04]

The Department may require the Permittee to conduct, or have conducted, testing to determine compliance with this Part 70 permit. The Department, at its option, may witness or conduct these tests. This testing shall be done at a reasonable time, and all information gathered during a testing operation shall be provided to the Department.

7. EMISSIONS TEST METHODS

[COMAR 26.11.01.04]

Compliance with the emissions standards and limitations in this Part 70 permit shall be determined by the test methods designated and described below or other test methods submitted to and approved by the Department.

Reference documents of the test methods approved by the Department include the following:

- a. 40 CFR 60, appendix A
- b. 40 CFR 51, appendix M
- c. The Department's Technical Memorandum 91-01 "Test Methods and Equipment Specifications for Stationary Sources", (January 1991), as amended through Supplement 3, (October 1, 1997)

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

8. EMISSIONS CERTIFICATION REPORT

**[COMAR 26.11.01.05-1] and [COMAR 26.11.02.19C] and
[COMAR 26.11.02.19D]**

The Permittee shall certify actual annual emissions of regulated pollutants from the facility on a calendar year basis.

- a. The certification shall be on forms obtained from the Department and submitted to the Department not later than April 1 of the year following the year for which the certification is required;
- b. The individual making the certification shall certify that the information is accurate to the individual's best knowledge. The individual shall be:
 - (1) Familiar with each source for which the certifications forms are submitted, and
 - (2) Responsible for the accuracy of the emissions information;
- c. The Permittee shall maintain records necessary to support the emissions certification including the following information if applicable:
 - (1) The total amount of actual emissions of each regulated pollutant and the total of all regulated pollutants;
 - (2) An explanation of the methods used to quantify the emissions and the operating schedules and production data that were used to determine emissions, including significant assumptions made;
 - (3) Amounts, types and analyses of all fuels used;
 - (4) Emissions data from continuous emissions monitors that are required by this permit, including monitor calibration and malfunction information;
 - (5) Identification, description, and use records of all air pollution control equipment and compliance monitoring equipment including:
 - (a) Significant maintenance performed,

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

- (b) Malfunctions and downtime, and
 - (c) Episodes of reduced efficiency of all equipment;
- (6) Limitations on source operation or any work practice standards that significantly affect emissions; and
- (7) Other relevant information as required by the Department.

9. COMPLIANCE CERTIFICATION REPORT

[COMAR 26.11.03.06G(6) and (7)]

The Permittee shall submit to the Department and EPA Region III a report certifying compliance with each term of this Part 70 permit including each applicable standard, emissions limitation, and work practice for the previous calendar year by April 1 of each year.

- a. The compliance certification shall include:
- (1) The identification of each term or condition of this permit which is the basis of the certification;
 - (2) The compliance status;
 - (3) Whether the compliance was continuous or intermittent;
 - (4) The methods used for determining the compliance status of each source, currently and over the reporting period; and
 - (5) Any other information required to be reported to the Department that is necessary to determine the compliance status of the Permittee with this permit.
- b. The Permittee shall submit the compliance certification reports to the Department and EPA simultaneously.

10. CERTIFICATION BY RESPONSIBLE OFFICIAL

[COMAR 26.11.02.02F]

All application forms, reports, and compliance certifications submitted pursuant to this permit shall be certified by a responsible official as to

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

truth, accuracy, and completeness. The Permittee shall expeditiously notify the Department of an appointment of a new responsible official.

The certification shall be in the following form:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

11. SAMPLING AND EMISSIONS TESTING RECORD KEEPING

[COMAR 26.11.03.06C(5)]

The Permittee shall gather and retain the following information when sampling and testing for compliance demonstrations:

- a. The location as specified in this permit, and the date and time that samples and measurements are taken;
- b. All pertinent operating conditions existing at the time that samples and measurements are taken;
- c. The date that each analysis of a sample or emissions test is performed and the name of the person taking the sample or performing the emissions test;
- d. The identity of the Permittee, individual, or other entity that performed the analysis;
- e. The analytical techniques and methods used; and
- f. The results of each analysis.

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

12. GENERAL RECORDKEEPING

[COMAR 26.11.03.06C(6)]

The Permittee shall retain records of all monitoring data and information that support the compliance certification for a period of five (5) years from the date that the monitoring, sample measurement, application, report or emissions test was completed or submitted to the Department.

These records and support information shall include:

- a. All calibration and maintenance records;
- b. All original data collected from continuous monitoring instrumentation;
- c. Records which support the annual emissions certification; and
- d. Copies of all reports required by this permit.

13. GENERAL CONFORMITY

[COMAR 26.11.26.09]

The Permittee shall comply with the general conformity requirements of 40 CFR 93, Subpart B and COMAR 26.11.26.09.

14. ASBESTOS PROVISIONS

[40 CFR 61, Subpart M]

The Permittee shall comply with 40 CFR 61, Subpart M when conducting any renovation or demolition activities at the facility.

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

15. OZONE DEPLETING REGULATIONS

[40 CFR 82, Subpart F]

The Permittee shall comply with the standards for recycling and emissions reduction pursuant to 40 CFR 82, Subpart F, except as provided for MVACs in subpart B:

- a. Persons opening appliances for maintenance, service, repair, or disposal shall comply with the prohibitions and required practices pursuant to 40 CFR 82.154 and 82.156.
- b. Equipment used during the maintenance, service, repair or disposal of appliances shall comply with the standards for recycling and recovery equipment pursuant to 40 CFR 82.158.
- c. Persons performing maintenance, service, repairs or disposal of appliances shall be certified by an approved technician certification program pursuant to 40 CFR 82.161.
- d. Persons performing maintenance, service, repairs or disposal of appliances shall certify with the Administrator pursuant to 40 CFR 82.162.
- e. Persons disposing of small appliances, MVACS, and MVAC-like appliances as defined in 40 CFR 82.152, shall comply with record keeping requirements pursuant to 40 CFR 82.166.
- f. Persons owning commercial or industrial process refrigeration equipment shall comply with the leak repair requirements pursuant to 40 CFR 82.156.
- g. Owners/operators of appliances normally containing 50 or more pounds of refrigerant shall keep records of refrigerant purchased and added to such appliances pursuant to 40 CFR 82.166.

16. ACID RAIN PERMIT

Not applicable

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

SECTION IV PLANT SPECIFIC CONDITIONS

This section provides tables that include the emissions standards, emissions limitations, and work practices applicable to each emissions unit located at this facility. The Permittee shall comply with all applicable emissions standards, emissions limitations and work practices included herein.

The tables also include testing, monitoring, record keeping and reporting requirements specific to each emissions unit. In addition to the requirements included here in **Section IV**, the Permittee is also subject to the general testing, monitoring, record keeping and reporting requirements included in **Section III – Plant Wide Conditions** of this permit.

Unless otherwise provided in the specific requirements for an emissions unit, the Permittee shall maintain at the facility for at least five (5) years, and shall make available to the Department upon request, all records that the Permittee is required under this section to establish. [Authority: COMAR 26.11.03.06C(5)(g)]

Table IV – 1	
1.0	<u>Emissions Unit Number(s)</u> Facility Wide Operating Limitation
1.1	<u>Applicable Standards/Limits:</u> The coal preparation plant shall not be operated in excess of 16 hrs/day. [PSD Approval Condition 2 Issued October 1, 1982 and revised May 6, 1983]
1.2	<u>Testing Requirements:</u> See Record Keeping Requirement
1.3	<u>Monitoring Requirements:</u> See Record Keeping Requirement
1.4	<u>Record Keeping Requirements:</u> The Permittee shall maintain records of the facility daily operating hours. [Reference: COMAR 26.11.03.06(C)]

METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042

Table IV – 1	
1.5	<u>Reporting Requirements:</u> See Record Keeping Requirement

Table IV – 2	
2.0	<u>Emissions Unit Number(s): EU-1</u> Thermal Coal Dryer equipped with 267 MMBtu/hr pulverized coal-fired burners (Operation); and 40 MMBtu/hr, No. 2 fuel oil fired burners (Start-up)
2.1	<u>Applicable Standards/Limits:</u> A. <u>Visible Emissions Limitations</u> 1. COMAR 26.11.06.02C – <u>Visible Emission Standards</u> . In Areas I, II, V, and VI, a person may not cause or permit the discharge of emissions from any installation or building, other than water in an uncombined form, which is greater than 20 percent opacity. 2. COMAR 26.11.06.02A(2) – <u>Exceptions</u> . The visible emissions standards in §C of this regulation do not apply to emissions during start-up and process modifications or adjustments, or occasional cleaning of control equipment, if: a. The visible emissions are not greater than 40 percent opacity; and b. The visible emissions do not occur for more than 6 consecutive minutes in any 60-minute period. 3. On and after the date on which the performance test is conducted or required to be completed under §60.8, whichever date comes first, the Permittee shall not cause to be discharged into the atmosphere from the thermal dryer any gases which exhibit 20 percent opacity or greater. [Reference: 40 CFR § 60.252(a)(2)] B. <u>Control of Particulate</u> 1. Total plant emissions shall not exceed 760 lb/day (based on a 16 hour operating day) and 0.02 gr/scfd. [Authority: PSD Approval Condition 2 Issued October 1, 1982 and revised May 6, 1983]

METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042

Table IV – 2

2. On and after the date on which the performance test is conducted or required to be completed under §60.8, whichever date comes first, the Permittee shall not cause to be discharged into the atmosphere from the thermal dryer any gases which contain PM in excess of 0.070 g/dscm (0.031 grains per dry standard cubic feet (gr/dscf)).
[Reference: 40 CFR § 60.252(a)(2)]

3. **COMAR 26.11.06.03B(1)(a) – Particulate Matter from Confined Sources in Areas I, II, V and VI Constructed On or After January 17, 1972.** A person may not cause or permit particulate matter to be discharged from any installation constructed on or after January 17, 1972 in excess of 0.05 gr/SCFD (115 mg/dscm).

Note: Demonstration of compliance with the more stringent PSD particulate matter emission limit of 0.02 gr/dscf also demonstrates compliance with the NSPS and COMAR particulate matter emission limits.

C. Control of Sulfur Oxides

1. Total plant emissions shall not exceed 78.6 lbs/hr and 1,258 lbs/day (based on a 16 hour operating day). **[PSD Approval Condition 2 Issued October 1, 1982 and revised May 6, 1983]**
2. **COMAR 26.11.09.07A(1)(a) & (c) – Sulfur Content Limitation for Fuel Burning Equipment Located in Areas I, II, V, and VI.** A person may not burn, sell, or make available for sale any fuel with a sulfur content by weight in excess of or which otherwise exceeds the following limitations:
 - a. The combustion of all solid fuels on a premises where the sum total maximum rated heat input of all fuel burning equipment located on the premises is 100 million Btu (10^6 gigajoules) per hour or greater may not result in a total emission of oxides of sulfur in excess of 3.5 pounds per million Btu (1.50 kilograms per gigajoule) actual heat input per hour;
 - b. Distillate fuel oils, 0.3 percent.

METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042

Table IV – 2	
	D. <u>Control of Nitrogen Oxides</u> 1. COMAR 26.11.09.08(J) – Requirements for Industrial Furnaces and Other Miscellaneous Installations that Cause Emissions of NO_x. A person who owns or operates any installation other than fuel-burning equipment that causes NO_x emissions shall: a. Maintain good operating practices as recommended by the equipment vendor to minimize NO_x emissions; b. Prepare and implement a written in-house training program for all operators of these installations that include instruction on good operating and maintenance practices for the particular installation; c. Maintain and make available to the Department, upon request, the written in-house operator training program; d. Burn only gas in each installation, where gas is available, during the period May 1 through September 30 of each year; and e. Maintain operator training attendance records for each operator at the site for at least 2 years and make these records available to the Department upon request.
2.2	<u>Testing Requirements:</u> A. <u>Visible Emissions Limitations</u> The Permittee must conduct all performance tests required by 40 CFR §60.8 to demonstrate compliance with the applicable emission standards using the methods identified in 40 CFR §60.257. [Authority: 40 CFR §60.255(a)] B. <u>Control of Particulate</u> 1. The Permittee shall perform an annual stack test in accordance with EPA Reference Test Method 5. There must be at least a 5-month span between each stack test. [Reference: COMAR 26.11.03.06C Periodic monitoring based on Consent Decree dated August 24, 2007] 2. The Permittee must conduct all performance tests required by 40 CFR §60.8 to demonstrate compliance with the applicable emission

METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042

Table IV – 2	
	standards using the methods identified in 40 CFR §60.257. [Authority: 40 CFR §60.255(a)] C. <u>Control of Sulfur Oxides</u> The Permittee shall conduct annual Reference Method 6 stack tests. There must be at least a 5-month span between each stack test. [Reference: COMAR 26.11.03.06C Periodic monitoring based on Consent Decree dated August 24, 2007] D. <u>Control of Nitrogen Oxides</u> The Permittee shall conduct Reference Method 7 stack tests at least once during the term of the permit. [Reference: COMAR 26.11.03.06C]
2.3	<u>Monitoring Requirements:</u> A. <u>Visible Emissions Limitations</u> The Permittee shall demonstrate compliance with the visible emissions standard through compliance with the requirements of the Compliance Assurance Monitoring (CAM) Plan for control of PM (Ref. Table IV-7) [Reference: COMAR 26.11.03.06C – Periodic monitoring based upon Consent Decree dated August 24, 2007] B. <u>Control of Particulate</u> 1. The Permittee shall monitor continuously the temperature of the gas stream at the exit of the thermal dryer. The monitoring device is to be certified by the manufacturer to be accurate within $\pm 3^{\circ}$ Fahrenheit. The Permittee shall recalibrate the monitoring device annually in accordance with the procedures under §60.13(b). [Reference: 40 CFR §60.256(a)(1)(i) & (a)(2)] 2. The Permittee shall monitor continuously the pressure loss through the venturi constriction of the control equipment. The monitoring device is to be certified by the manufacturer to be accurate within ± 1 inch water gauge. The Permittee shall recalibrate the monitoring device annually in accordance with the procedures under §60.13(b). [Reference: 40 CFR §60.256(a)(1)(ii)(A) & (a)(2)] 2. The Permittee shall monitor continuously the water supply pressure to the control equipment. The monitoring device is to be certified by

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

Table IV – 2	
	the manufacturer to be accurate within ± 5 % of design water supply pressure. The Permittee shall recalibrate the monitoring device annually in accordance with the procedures under §60.13(b). [Reference: 40 CFR §60.256(a)(1)(ii)(B) & (a)(2)] 3. The Permittee shall comply with requirements of the CAM Plan for PM. See Table IV–7. [Reference: 40 CFR part 64] C. <u>Control of Sulfur Oxides</u> 1. The Permittee shall comply with requirements of the CAM Plan for SO₂. See Table IV–6. [Reference: 40 CFR part 64] 2. The Permittee shall obtain a fuel oil certification or specification from the fuel supplier indicating that the oil complies with the limitation on sulfur content. [Reference: COMAR 26.11.03.06C] D. <u>Control of Nitrogen Oxides</u> The Permittee shall maintain good operating practices as recommended by the equipment vendor to minimize NO_x emissions.” [Reference: COMAR 26.11.09.08J(1)]
2.4	<u>Record Keeping Requirements:</u> A. <u>Visible Emissions Limitations</u> The Permittee shall maintain records as required by the CAM plan for PM. See Table IV–7. [Reference: COMAR 26.11.03.06C] B. <u>Control of Particulate</u> The Permittee shall maintain the following records: 1. Stack tests results; 2. Venturi throat pressure differential; 3. Water supply pressure to the control equipment; 4. Gas stream temperature; and 5. Recalibration of all monitoring devices.

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

Table IV – 2	
	[Reference: COMAR 26.11.03.06C] C. <u>Control of Sulfur Oxides</u> The Permittee shall maintain the following records: 1. Stack tests results; and 2. Documents certifying the sulfur content of fuel oil received; [Reference: COMAR 26.11.03.06C] D. <u>Control of Nitrogen Oxides</u> 1. The Permittee shall maintain annual fuel use records on site. [Reference: COMAR 26.11.09.08K(3)] 2. The Permittee shall maintain records of operator training program and attendance by each operator. [Reference: COMAR 26.11.03.06C] 3. The Permittee shall maintain records of Stack test results. [Reference: COMAR 26.11.03.06C] Note: Additional record keeping requirements are contained in the CAM Plan: Table IV-6 for SO₂ emissions and Table IV–7 for particulate emissions.
2.5	<u>Reporting Requirements:</u> A. <u>Visible Emissions Limitations</u> The Permittee shall report incidents of visible emissions in accordance with Permit Condition 4, Section III, “Report of Excess Emissions and Deviations.” B. <u>Control of Particulate</u> A test protocol shall be submitted to the Department for approval at least 30 days prior to the scheduled test date. The Permittee shall submit a copy of the results of compliance stack tests to the Department within 45 days after the date the test was completed. [Reference: COMAR 26.11.03.06C. Periodic monitoring based on Consent Decree, dated August 24, 2007]

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

Table IV – 2	
C. <u>Control of Sulfur Oxides</u>	A test protocol shall be submitted to the Department for approval at least 30 days prior to the scheduled test date. The Permittee shall submit a copy of the results of compliance stack tests to the Department within 45 days after the date the test was completed. [Reference: COMAR 26.11.03.06C. Periodic monitoring based on Consent Decree, dated August 24, 2007]
D. <u>Control of Nitrogen Oxides</u>	A test protocol shall be submitted to the Department for approval at least 30 days prior to the scheduled test date. The Permittee shall submit a copy of the results of compliance stack tests to the Department within 45 days after the date the test was completed. [Reference: COMAR 26.11.03.06C and COMAR 26.11.09.08K(2)] Note: Additional reporting requirements are contained in the CAM Plan: Table IV-6 for SO₂ emissions and Table IV–7 for particulate emissions.

Table IV – 3				
3.0	<u>Emissions Unit Number(s): EU-2</u>			
	Coal Handling System			
	Reg. No. 023-0042-9-0009			
	Emission Unit No.	Description	Emission Type	Control
	MCC02	Rotary Breaker & Screening	Fugitive	Enclosure, water sprays
	MCC03	Raw Coal Temporary Stockout - Temporary	Fugitive	None
	MCC04	Raw Coal Temporary Stockout Storage, Wind Erosion		None
	MCC05	Raw Coal Silo	Fugitive	None
	MCC06	Storage Pile Stockout – Middling from Thermal Dryer	Fugitive	None
	MCC07	Clean Coal Storage Silos Stockout – from Thermal Dryer	Fugitive	None
	MCC08	Clean Coal Storage Pile Stockout	Fugitive	None

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

Table IV – 3				
	MCC09	Storage Pile Maintenance	Fugitive	None
	MCC10	Storage Pile Wind Erosion – Clean Coal	Fugitive	None
	MCC11A/B	Railcar/Truck Loading	Fugitive	Enclosure,
	MCC12	Coal Refuse Stockout	Fugitive	None
	MCC13	Low BTU Coal Stockout	Fugitive	None
	MCC14	Storage Pile Wind Erosion – Low Btu Coal	Fugitive	None
	MCC15	Maintenance Vehicle Traffic	Fugitive	Water sprays
	MCC17	1500-ton per hour (TPH) Double-bay Truck Dump-E Mine	Fugitive	Enclosure
	MCC18	Scalped Rock Dump System	Fugitive	None
3.1	<u>Applicable Standards/Limits:</u> A. <u>Visible Emissions Limitations</u> 1. The Permittee shall not cause to be discharged into the atmosphere from any coal processing and conveying equipment, coal storage system, or coal transfer and loading system processing coal, gases which exhibit 20 percent opacity or greater. [Reference: 40 CFR § 60.254(a)] B. <u>Control of Particulate Matter</u> 1. COMAR 26.11.06.03C(1) – <u>Particulate Matter from Unconfined Sources.</u> A person may not cause or permit emissions from an unconfined source without taking reasonable precautions to prevent particulate matter from becoming airborne. These reasonable precautions shall include, when appropriate as determined by the Department, the installation and use of hoods, fans, and dust collectors to enclose, capture, and vent emissions. In making this determination, the Department shall consider technological feasibility, practicality, economic impact, and the environmental consequences of the decision. 2. COMAR 26.11.06.03D – <u>Particulate Matter from Materials Handling and Construction.</u> A person may not cause or permit any material to be handled, transported, or stored, or a building, its appurtenances, or a road to be used, constructed, altered, repaired, or demolished without taking reasonable precautions to prevent particulate matter			

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

Table IV – 3	
	from becoming airborne. These reasonable precautions shall include, but not be limited to, the following when appropriate as determined by the control officer: a. Use of water or chemicals for control of dust in the demolition of existing buildings or structures, construction operations, the grading of roads, or the clearing of land. b. Application of asphalt, oil, water, or suitable chemicals on dirt roads, materials stockpiles, and other surfaces, which can create airborne dusts. c. Installation and use of hoods, fans, and dust collectors to enclose and vent the handling of dusty materials. Adequate containment methods shall be employed during sandblasting of buildings or other similar operations. d. Covering, at all times when in motion, open-bodied vehicles transporting materials likely to create air pollution. Alternate means may be employed to achieve the same results as would covering the vehicles. e. The paving of roadways and their maintenance in clean condition. f. The prompt removal from paved streets of earth or other material which has been transported there by trucks or earth moving equipment or erosion by water.
3.2	<u>Testing Requirements:</u> A. <u>Visible Emissions Limitations</u> See monitoring requirements. B. <u>Control of Particulate</u> See monitoring requirements.
3.3	<u>Monitoring Requirements:</u> A. <u>Visible Emissions Limitations</u> The Permittee shall maintain and update as necessary a Best Management Practices Plan that outlines how the source shall monitor

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

Table IV – 3	
	and control visible and particulate emissions. The Plan shall include monthly visual emissions observations required to be conducted and a log of the results of the observations. [Reference: COMAR 26.11.03.06C] B. <u>Control of Particulate</u> The Permittee shall maintain and update as necessary a Best Management Practices Plan that outlines how the source shall control particulate emissions. [Reference: COMAR 26.11.03.06C]
3.4	<u>Record Keeping Requirements:</u> A. <u>Visible Emissions Limitations</u> The Permittee shall maintain a written copy of the Best Management Practices Plan and logs of the dates, time, and results of all visible emissions observations performed on site and shall make them available to the Department upon request. [Reference: COMAR 26.11.03.06C] B. <u>Control of Particulate</u> The Permittee shall maintain a copy of the Best Management Practices Plan and a record of the date and times when the reasonable control actions are completed. [Reference: COMAR 26.11.03.06C]
3.5	<u>Reporting Requirements:</u> A. <u>Visible Emissions Limitations</u> The Permittee shall submit an updated plan and the visible emissions logs to the Department upon request. [Reference: COMAR 26.11.03.06C] B. <u>Control of Particulate</u> The Permittee shall submit an updated plan and the records of actions completed to the Department upon request. [Reference: COMAR 26.11.03.06C]

METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042

Table IV – 4	
4.0	<u>Emissions Unit Number(s): EU-3</u> 6,000 Gasoline Storage Tank
4.1	<u>Applicable Standards/Limits</u> <u>Control of VOC Emissions</u> COMAR 26.11.13.04C(2) – <u>Small Storage Tanks – Stage I Recovery.</u> An owner or operator of a gasoline tank truck or an owner or operator of a stationary storage tank subject to this regulation may not cause or permit gasoline to be loaded into a stationary tank unless the loading system is equipped with a vapor balance line that is properly installed, maintained and used. COMAR 26.11.13.04D – <u>Small Storage Tanks - General Standards.</u> A person may not cause or permit gasoline or VOC having a TVP greater than 1.5 psia or greater be loaded into any tank truck, railroad tank car, or other contrivance unless: - Loading connections on the vapor lines are equipped with fittings that have no leaks and that automatically and immediately close upon disconnection to prevent release of gasoline or VOC from these fittings; and - The equipment is maintained and operated in a manner to prevent avoidable liquid leaks during loading or unloading operations.
4.2	<u>Testing Requirements</u> <u>Control of VOC Emissions</u> See Monitoring Requirements
4.3	<u>Monitoring Requirements</u> <u>Control of VOC Emissions</u> - The Permittee shall inspect at least one fuel drop once every six months to verify that: - The Stage 1 vapor balance system is used;

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

Table IV – 4	
	b. No liquid spills occur; and c. The hose fittings and connections are operating properly and do not leak. 2. If leaks are detected, The Permittee shall take the following corrective actions: a. Take immediate action to repair all observed VOC leaks that can be repaired with 48 hours; and b. Repair all other leaking components no later than 15 days after the leak is discovered. If a replacement part is needed, the part shall be ordered within 3 days after discovery of the leak, and the leak shall be repaired within 48 hours after receiving the part. [Reference: COMAR 26.11.03.06C Periodic Monitoring]
4.4	<u>Record Keeping Requirements:</u> <u>Control of VOC Emissions</u> The Permittee shall maintain records of fuel drop inspection results and corrective actions as required. [Reference: COMAR 26.11.03.06C]
4.5	<u>Reporting Requirements:</u> <u>Control of VOC Emissions</u> The Permittee shall make records available to the Department upon request. [Reference: COMAR 26.11.03.06C]

Table IV – 6 Compliance Assurance Monitoring (CAM) [Reference: 40 CFR Part 64] Thermal Dryer MDE Reg. No. 9-0009 – SO₂				
	Indicator #1	Indicator #2	Indicator #3	Indicator #4
I. Indicator Description	Scrubber liquid pH	Pressure in the scrubber pump line.	Work Practice	Performance test EPA Method 6
Measurement Approach	The scrubber effluent pH is measured	The pressure in the scrubber pump line is	Visual inspections of the thickness of	Conduct emissions test to demonstrate

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

Table IV – 6 Compliance Assurance Monitoring (CAM) [Reference: 40 CFR Part 64] Thermal Dryer MDE Reg. No. 9-0009 – SO₂				
	Indicator #1	Indicator #2	Indicator #3	Indicator #4
	using a pH sensor.	measured using a pressure transducer.	the scale buildup in the scrubber pipe.	compliance with permitted emission limits.
II. Indicator Range	An excursion is defined as a 1-hour average scrubber effluent pH value below 6.1	An excursion is defined as a 1-hour average pressure less than 8 psi or greater than 13 psi.	An excursion is defined as when scale buildup reduces the inside diameter of the scrubber pipe to 6 inches or less.	An excursion is defined as any finding that the dryer does not meet the permitted emission limit.
Corrective Action	An excursion triggers an inspection, corrective action as necessary, and a reporting requirement.	An excursion triggers an inspection, corrective action as necessary, and a reporting requirement.	An excursion triggers replacement or repair of the affected pipe section(s) to restore the inside diameter to greater than 6 inches.	An excursion triggers an assessment of the problem, corrective action and a reporting requirement.
III. Performance Criteria				
A. Representative Data	The scrubber liquid pH sensor is located in the scrubber return line.	The pressure transducer is located in the scrubber pump line.	NA	A test protocol shall be prepared and approved by the Department prior to conducting the performance test.
B. Verification of Operational Status	Calibrate the pH sensor against standard reference buffer	Factory calibration before installation.	NA	NA

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

Table IV – 6 Compliance Assurance Monitoring (CAM) [Reference: 40 CFR Part 64] Thermal Dryer MDE Reg. No. 9-0009 – SO₂				
	Indicator #1	Indicator #2	Indicator #3	Indicator #4
	solutions of known pH.			
C. QA/QC Practices and Criteria	The pH meter is calibrated once per week to within +/- 0.1 pH units accuracy.	Calibrate the pressure transducer to within +/- 1 PSI annually	NA	EPA test methods approved in protocol.
D. Monitoring Frequency	The scrubber liquid pH is measured continuously when the dryer is in operation.	The scrubber pressure is measured continuously when the dryer is in operation.	Visual inspection of the scrubber pipe every 6 months.	Conduct an annual Reference Method 6 stack test. There must be at least a 5-month span between each stack test.
Data Collection Procedure.	Scrubber effluent pH is recorded at 5-minute intervals then 1-hour averages are computed and stored based on the 5-minute intervals.	Pressure is recorded at 5-minute intervals then 1-hour averages are computed and stored based on the 5-minute intervals.	Results of the pipe inspections, including scale buildup measurements are recorded & submitted to MDE on monthly monitoring reports, where applicable.	Per approved test methods.
Averaging Period	1-hour.	1-hour.	NA	NA
E. Record Keeping	Maintain a log of scrubber liquid pH and corrective actions implements.	Maintain a log the pressure in the scrubber pump line and corrective actions implements.	Maintain a log the Work Practice and corrective actions implements.	Maintain a copy of the test report for 5 years or until another test is conducted. Maintain

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

Table IV – 6 Compliance Assurance Monitoring (CAM) [Reference: 40 CFR Part 64] Thermal Dryer MDE Reg. No. 9-0009 – SO₂				
	Indicator #1	Indicator #2	Indicator #3	Indicator #4
				records of corrective actions taken in response to excursions.
Reporting	The scrubber effluent pH is measured using a pH sensor. Submit monthly report.	The pressure in the scrubber pump line is measured using a pressure transducer. Submit monthly report.	Visual inspections of the thickness of the scale buildup in the scrubber pipe. Submit twice per year.	Submit test protocol and notification of testing to Agency 30 days prior to test date. Submit test report 45 days after conducting a performance test.
Frequency	An excursion is defined as a 1-hour average scrubber effluent pH value below 6.1	An excursion is defined as a 1-hour average pressure less than 8 psi or greater than 13 psi	An excursion is defined as when scale buildup reduces the inside diameter of the scrubber pipe to 6 inches or less.	For each performance test conducted.

Table IV – 7 Compliance Assurance Monitoring (CAM) [Reference: 40 CFR Part 64] Thermal Dryer - MDE Reg. No. 9-0009 PM		
	Indicator #1	Indicator #2
I. Indicator	Scrubber differential Pressure	Performance test
Measurement Approach	The pressure drop across the venturi is measured using a differential pressure transducer (Kinpactor pressure monitors.)	Conduct EPA Method 5 emissions test to demonstrate compliance with permitted emission limits

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

Table IV – 7 Compliance Assurance Monitoring (CAM) [Reference: 40 CFR Part 64] Thermal Dryer - MDE Reg. No. 9-0009 PM		
	Indicator #1	Indicator #2
II. Indicator Range	An excursion is defined as a 1-hour average differential pressure below 30 inches of water	An excursion is defined as any finding that the dryer does not meet the permitted emission limit.
Corrective Action	Each excursion triggers an inspection, corrective action as necessary and a reporting requirement.	An excursion triggers an assessment of the problem, corrective action and a reporting requirement.
III. Performance Criteria		
A. Representative Data	The differential pressure transducer monitors the static pressures upstream and downstream of the scrubber's venturi throat.	A test protocol shall be prepared and approved by the Department prior to conducting the performance test.
B. Verification of Operational Status	NA	NA
C. QA/QC Practices and Criteria	The differential pressure transducer is calibrated annually within +/- 1 inch water.	EPA test methods approved in protocol.
D. Monitoring Frequency	Measured continuously when the dryer is operating.	Conduct an annual Reference Method 5 stack test. There must be at least a 5-month span between each stack test.
Data Collection Procedure	Differential pressure is recorded at 5-minute intervals then 1-hour averages are computed and stored based on the 5-minute intervals.	Per approved test methods.
Averaging Period	1-Hour	Not applicable.

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

SECTION V INSIGNIFICANT ACTIVITIES

This section provides a list of insignificant emissions units that were reported in the Title V permit application. The applicable Clean Air Act requirements, if any, are listed below the insignificant activity.

- (1) ✓ Space heaters utilizing direct heat transfer and used solely for comfort heat;
- (2) ✓ Photographic process equipment used to reproduce an image upon sensitized material through the use of radiant energy;
- (3) Containers, reservoirs, or tanks used exclusively for:
 - (a) ✓ Storage of butane, propane, or liquefied petroleum, or natural gas;
 - (b) No. 7 Storage of lubricating oils;
 - (c) No. 1 Storage of Numbers 1, 2, 4, 5, and 6 fuel oil and aviation jet engine fuel;
- (4) ✓ Charbroilers and pit barbecues as defined in COMAR 26.11.18.01 with a total cooking area of 5 square feet (0.46 square meter) or less;
- (5) ✓ Certain recreational equipment and activities, such as fireplaces, barbecue pits and cookers, fireworks displays, and kerosene fuel use.

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

SECTION VI STATE-ONLY ENFORCEABLE CONDITIONS

The Permittee is subject to the following State-only enforceable requirements:

1. Applicable Regulations:
 - a. COMAR 26.11.06.08 and 26.11.06.09, which generally prohibit the discharge of emissions beyond the property line in such a manner that a nuisance or air pollution is created.
 - b. COMAR 26.11.15.05, which requires that the Permittee implement “Best Available Control Technology for Toxics” (T – BACT) to control emissions of toxic air pollutants.
 - c. COMAR 26.11.15.06, which prohibits the discharge of toxic air pollutants to the extent that such emissions will unreasonably endanger human health.
2. Record Keeping and Reporting:
 - a. The Permittee shall submit to the Department, by April 1 of each year during the term of this permit, a written certification of the results of an analysis of emissions of toxic air pollutants from the Permittee’s facility during the previous calendar year. The analysis shall include either:
 - i. A statement that previously submitted compliance demonstrations for emissions of toxic air pollutants remain valid; or
 - ii. A revised compliance demonstration, developed in accordance with requirements included under COMAR 26.11.15 & 16, that accounts for changes in operations, analytical methods, emissions determinations, or other factors that have invalidated previous demonstrations.
3. Consent Decree, dated August 24, 2007 Requirements
 - a. Mettiki shall replace the scrubber pipe, within 1-week of discovery, whenever an inspection indicates that the scale build-up in the pipe reduces the inside diameter of the pipe to six (6) inches or less.
 - b. Mettiki shall inspect the scrubber pipe, determine and record the thickness of the scale build-up in the pipe once every six months. There must be at least a 5-month span between inspections.

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

- c. Mettiki shall maintain records of the semi-annual scrubber pipe inspections and record the thickness of the scale build-up. The records shall be kept at the Facility for a period of three (3) years and made available to the Department upon request
- d. The diameter of the opening of the scrubber bleed line orifice shall not exceed 1.75 inches, nor shall the flow rate exceed 250 gallons per minute on a daily basis. If discovered during inspection and/or monitoring that these limits are exceeded, Mettiki shall replace the bleed line orifice within 1-week of discovery.
- e. Mettiki shall inspect the scrubber bleed to the disposal line orifice and determine the orifice diameter on a monthly basis.
- f. Mettiki shall maintain the monthly records of the scrubber bleed to the disposal line orifice inspections and records of the orifice diameter. The records shall be kept at the Facility for a period of three (3) years and made available to the Department upon request
- g. Except during periods of startup and shutdown of the thermal coal dryer, when the dryer is in operation Mettiki shall maintain:
 - i. pH of the effluent from the scrubbers on the thermal coal dryer at 6.1 or higher (hourly average);
 - ii. Pressure drop across the venturi at greater than 30 inches of water column (hourly average);
 - iii. Scrubber pump line between 8 psi and 13 psi (hourly average)

For these requirements the startup and shutdown exception period for the thermal coal dryer is limited to thirty (30) minutes per incident.
- h. Mettiki shall measure and record the following parameters at intervals of no greater than 5 minutes during all times that thermal coal dryer is in operation:
 - i. pH of the effluent from the scrubbers;
 - ii. Pressure drop across the venturi;
 - iii. Pressure in the scrubber pump line; and

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

- iv. Perform scrubber bleed to disposal flow monitoring to determine flow using a gallon per minute measure on a continuous basis.
- i. Mettiki shall maintain the monthly records of the following parameters:
 - i. pH of the effluent from the scrubbers;
 - ii. Pressure drop across the venturi;
 - iii. Pressure in the scrubber pump line; and
 - iv. Perform scrubber bleed to disposal flow.
- j. Mettiki shall submit a monthly report to the Department that identifies:
 - i. The days and hours during which the thermal coal dryer was in operation;
 - ii. An explanation for all exceedances of each of the thermal coal dryer scrubber operational limits;
 - iii. Results of inspections of the scrubber bleed to disposal line orifice;
 - iv. The following data reported as hourly averages:
 - 1. pH of the effluent from the scrubbers;
 - 2. Pressure drop across the venturi; and
 - 3. Pressure in the scrubber pump line;

Each monthly report shall be due on the tenth (10th) business day following the end of the reporting period and shall be sent to:

Air Quality Compliance Program,
Air and Radiation Administration
Maryland Department of the Environment
1800 Washington Blvd. - Ste. 720
Baltimore, Maryland 21230.

- k. If the facility fails a SO₂ stack test, Mettiki shall submit to the Department, for its review and approval within 60 days of notification of the failed test, a plan to install additional SO₂ emissions controls,

**METTIKI COAL, LLC
293 TABLE ROCK ROAD
OAKLAND, MARYLAND 21550
PART 70 OPERATING PERMIT NO. 24-023-0042**

including a schedule for doing such. Should the Department disapprove the plan, Mettiki shall submit a revised plan incorporating those revisions requested by the Department within two (2) weeks of receiving the notice of disapproval. Upon Departmental approval of the plan to install additional SO₂ emission controls, Mettiki shall implement the plan in accordance with the approved schedule. Notwithstanding this provision, if Mettiki elects to initiate a re-permit proceeding and it is determined not to be a PSD source, Mettiki shall perform stack testing in accordance with the schedule contained in the new permit in lieu of that contained herein.

EXHIBIT 7

Aggregate Industries at Sheriff Road
Permit-to-Operate, Premises No. 033-0934



Maryland
Department of
the Environment

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor
Ben Grumbles, Secretary
Horacio Tablada, Deputy Secretary

Mr. Tim Bevard, Land Manager
Bardon, Inc.
dba Aggregate Industries @ Sheriff Road
6401 Golden Triangle Dr., Suite 400
Greenbelt, MD 20770

JUN 01 2022

Dear Mr. Bevard:

Enclosed please find your Renewal State Permit to Operate for Aggregate Industries at Sheriff Road located in Prince George's County MD. The permit will expire on May 31, 2027. The permit contains both general conditions, which apply to all permit-to-operate holders in Maryland, and specific conditions, which apply to your facility's particular operations.

Please be reminded that an emissions based fee must be paid annually and is due by the anniversary date of the permit. The Department will bill you prior to the anniversary date for the annual fee.

If you have any questions regarding the issuance of this permit, please contact Dennis Borie at (410) 537-3362.

Sincerely,

A handwritten signature in black ink, appearing to read "Suna Yi Sariscak".

Suna Yi Sariscak, Manager
Air Quality Permits Program
Air & Radiation Administration

SYS/jm

Enclosure

KEEP PERMIT AT SITE

CONTROL NO. B - 06974

Larry Hogan
Governor

State of



Maryland

Ben Grumbles
Secretary

DEPARTMENT OF THE ENVIRONMENT

Air and Radiation Administration
1800 Washington Boulevard, Suite 720
Baltimore, MD 21230

☐ Construction Permit

☒ Operating Permit

PERMIT NO. 033-0934

DATE ISSUED June 1, 2022

PERMIT FEE To be paid in accordance
with COMAR 26.11.02.19B

EXPIRATION
DATE May 31, 2027

LEGAL OWNER & ADDRESS

Bardon, Inc.
dba Aggregate Industries @ Sheriff Road
6401 Golden Triangle Drive Suite 400
Greenbelt, MD 20770
Attn: Mr. Tim Bevard, Land Manager

SITE

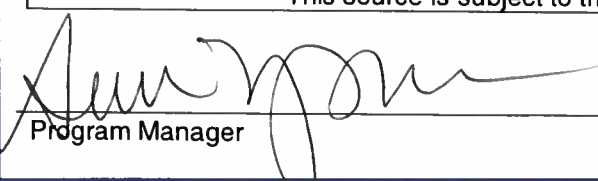
Aggregate Industries @ Sheriff Road Facility
5850 Sheriff Road
Capitol Heights, MD 20743
Premises # 033-0934
AI # 3664

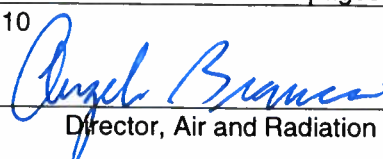
SOURCE DESCRIPTION

Reclaimed Asphalt Pavement (RAP) crushing, screening, and fractionation plant powered by on grid electricity.

This source is subject to the conditions described on the attached pages.

Page 1 of 10


Program Manager


Director, Air and Radiation Administration

**AGGREGATE INDUSTRIES AT SHERIFF ROAD
5850 SHERIFF ROAD
CAPITOL HEIGHTS, MARYLAND 20743
PERMIT-TO-OPERATE CONDITIONS
PREMISES No. 033-0934**

INDEX

Part A – General Provisions
Part B – Applicable Regulations
Part C – Operating Conditions
Part D – Record Keeping and Reporting

This permit-to-operate incorporates requirements for the following registered installation:

ARA Registration No.	Description	Date of Installation
033-0934-6-1512	One (1) Reclaimed Asphalt Pavement (RAP) crushing, screening, and fractionation plant powered by on-grid electricity consisting of: • one (1) 300 tph Kobelco Model 1315 impact crusher; • one (1) 300 tph Thunderbird 6' x 16' triple deck screen; • one (1) 350 tph Astec 6' x 18' Model PSP 2618 VM mobile high frequency double deck screen; • fifteen (15) conveyors; and • two (2) hoppers. The plant will be equipped with wet suppression systems to control fugitive dust.	2015

Part A – General Provisions

- (1) The application (Form 26) received at the Department on April 5, 2022, which is less than the 60 days required by COMAR 26.11.02.14D for the renewal of the Permittee's permit-to-operate is incorporated into this permit by reference. If there are any conflicts between representations in the application and representations in this permit, the representations in the permit shall govern. Estimates of dimensions, volumes, emissions rates, operating rates, feed rates and hours of operation included in the application for renewal do not constitute enforceable numeric limits beyond the extent necessary for compliance with applicable requirements.

**AGGREGATE INDUSTRIES AT SHERIFF ROAD
5850 SHERIFF ROAD
CAPITOL HEIGHTS, MARYLAND 20743
PERMIT-TO-OPERATE CONDITIONS
PREMISES No. 033-0934**

- (2) Upon presentation of credentials, representatives of the Maryland Department of the Environment ("MDE" or the "Department") and the Prince George's County Health Department shall at any reasonable time be granted, without delay and without prior notification, access to the Permittee's property and permitted to:
- (a) inspect any construction authorized by this permit;
 - (b) sample, as necessary to determine compliance with requirements of this permit, any materials stored or processed on-site, any waste materials, and any discharge into the environment;
 - (c) inspect any monitoring equipment required by this permit;
 - (d) review and copy any records, including all documents required to be maintained by this permit, relevant to a determination of compliance with requirements of this permit; and
 - (e) obtain any photographic documentation or evidence necessary to determine compliance with the requirements of this permit.
- (3) Nothing in this permit authorizes the violation of any rule or regulation or the creation of a nuisance or air pollution.
- (4) If any provision of this permit is declared by proper authority to be invalid, the remaining provisions of the permit shall remain in effect.

Part B – Applicable Regulations

- (1) This source is subject to all applicable federal air pollution control requirements including, but not limited to, the following:
- (a) All applicable terms, provisions, emissions standards, testing, monitoring and record keeping and reporting requirements included in federal New Source Performance Standards (NSPS) promulgated under 40 CFR 60, Subparts A (General Provisions) and Subpart OOO for Nonmetallic Mineral Processing Plants.
 - (b) All notifications required under 40 CFR 60, Subparts A and OOO shall be submitted to both of the following:

**AGGREGATE INDUSTRIES AT SHERIFF ROAD
5850 SHERIFF ROAD
CAPITOL HEIGHTS, MARYLAND 20743
PERMIT-TO-OPERATE CONDITIONS
PREMISES No. 033-0934**

The Administrator
Compliance Program
Maryland Department of the Environment
Air and Radiation Administration
1800 Washington Boulevard, STE 715
Baltimore MD 21230

and

United States Environmental Protection Agency
Region III, Enforcement & Compliance Assurance Division
Air, RCRA and Toxics Branch (3ED21)
Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, PA 19103-2852

- (2) This source is subject to all applicable federally enforceable State air pollution control requirements including, but not limited to, the following regulations:
- (a) COMAR 26.11.01.07C, which requires that the Permittee report to the Department occurrences of excess emissions.
 - (b) COMAR 26.11.02.09A, which requires that the Permittee obtain a permit-to-construct if an installation is to be modified in a manner that would cause changes in the quantity, nature, or characteristics of emissions from the installation as referenced in this permit.
 - (c) COMAR 26.11.06.03C & D, which requires that the Permittee take reasonable precautions to prevent particulate matter from unconfined sources and materials handling and construction operations from becoming airborne.
 - (d) COMAR 26.11.06.12 which states that a person may not construct, modify, or operate, or cause to be constructed, modified, or operated, a New Source Performance Standard (NSPS) source in a manner which results or will result in violation of the provisions of 40 CFR, Part 60.
- (3) This source is subject to all applicable State-only enforceable air pollution control requirements including, but not limited to, the following regulations:

**AGGREGATE INDUSTRIES AT SHERIFF ROAD
5850 SHERIFF ROAD
CAPITOL HEIGHTS, MARYLAND 20743
PERMIT-TO-OPERATE CONDITIONS
PREMISES No. 033-0934**

- (a) COMAR 26.11.02.13A(16), which requires that the Permittee obtain from the Department, and maintain and renew as required, a valid State permit-to-operate.
- (b) COMAR 26.11.02.19C & D, which require that the Permittee submit to the Department annual certifications of emissions, and that the Permittee maintain sufficient records to support the emissions information presented in such submittals.
- (c) COMAR 26.11.06.08 and 26.11.06.09, which generally prohibit the discharge of emissions beyond the property line in such a manner that a nuisance or air pollution is created.
- (d) COMAR 26.11.15.05, which requires that the Permittee implement "Best Available Control Technology for Toxics" (T – BACT) to control emissions of toxic air pollutants.
- (e) COMAR 26.11.15.06, which prohibits the discharge of toxic air pollutants to the extent that such emissions would unreasonably endanger human health.

Part C – Operating Conditions

- (1) The Permittee shall maintain and operate all installations and associated air pollution control equipment so as to assure full and continuous compliance with all applicable air pollution control regulations and permit conditions.
- (2) The Permittee shall properly maintain, calibrate, and operate all control panel instrumentation and all devices employed to monitor performance of the facility's air pollution control devices.
- (3) Wet suppression systems shall be used as needed for the RAP crushing, screening, and fractionation plant to comply with the fugitive particulate matter requirements of COMAR 26.11.06.03C and COMAR 26.11.06.03D and the following opacity limits for nonmetallic mineral processing plants that commenced construction, modification, or reconstruction on or after April 22, 2008 as specified in 40 CFR, Part 60, Subpart OOO:
 - (a) No more than 12 percent opacity from the crusher; and
 - (b) No more than 7 percent opacity from all other fugitive sources.

**AGGREGATE INDUSTRIES AT SHERIFF ROAD
5850 SHERIFF ROAD
CAPITOL HEIGHTS, MARYLAND 20743
PERMIT-TO-OPERATE CONDITIONS
PREMISES No. 033-0934**

[Reference: 40 CFR §60.672(b) and Table 3 to 40 CFR 60 Subpart 000]

- (4) The Permittee shall perform monthly periodic inspections to check that water is flowing to discharge spray nozzles in the wet suppression systems. The Permittee must initiate corrective action within 24 hours and complete corrective action as expeditiously as practical if the Permittee finds that water is not flowing properly during an inspection of the water spray nozzles. **[Reference: 40 CFR §60.674(b)]**
- (5) The Permittee shall only process RAP in the crushing, screening and fractionation plant unless approval is obtained from the Department to process other material(s).
- (6) The Permittee shall comply with the following requirements of the Department-approved Fugitive Dust Plan, unless an alternate plan is approved by the Department:

OPERATION AND MAINTENANCE OF PROCESSING EQUIPMENT AND ASSOCIATED AIR POLLUTION CONTROL EQUIPMENT

- (a) Spray bars and nozzles shall be kept in good working order.
 - (i) The spray bars shall be operated continuously during crushing and screening at the OEM's recommended water delivery pressure (PSI) and volumetric flow rate (GPM).
 - (ii) The spray bar nozzles shall be checked at least once daily for clogs and cleaned as needed to maintain a uniform spray pattern.
- (b) Accumulated material around the crusher shall be removed from the immediate area on a regular basis. Spillage and residual materials from the process shall be picked up daily and returned to the raw material stockpiles for reuse.

SITE MAINTENANCE

- (a) Dust on the unpaved areas where vehicular traffic will travel shall be controlled by application of water. Water shall be applied at least once each hour that there is vehicular traffic moving about on the

**AGGREGATE INDUSTRIES AT SHERIFF ROAD
5850 SHERIFF ROAD
CAPITOL HEIGHTS, MARYLAND 20743
PERMIT-TO-OPERATE CONDITIONS
PREMISES No. 033-0934**

site. Additional water shall be applied as needed to control fugitive dust. In the event alternative dust suppressant aids are used, they will be applied according to the manufacturer's specifications for quantity and frequency.

- (b) The speed of vehicles associated with the RAP crushing and screening operation on the site shall be limited to 15 miles per hour (MPH) while on-site.
- (c) Roadways on the site shall be controlled with application of water from a water spray truck. The roadways shall be watered at least once per operating day when there has not been natural precipitation. Additional applications of water shall be made, as needed, to prevent a dust nuisance beyond the property lines.
- (d) Dust from stockpiles associated with the RAP crushing and screening operation shall be controlled. The stockpiles are built up as material is discharged from the conveyors. During this phase, any dust that might rise off the stockpiles shall be controlled with water, as needed, to prevent a dust nuisance beyond the property lines.
- (e) All trucks leaving the site shall be required to cover their loads and travel via designated roadways. Trucks shall not travel through residential neighborhoods.
- (f) Complaints by community members of spillage, excessive speed, etc. can be reported to the site manager and the problem will be corrected as appropriate.

OTHER

- (a) The front-end loader operator shall be directed to avoid overfilling the bucket of the loader and the feed hopper, and to minimize the drop height of the material when loading the feed hopper and haul vehicles to prevent spillage and fugitive dust.
- (b) The stockpiles shall not be worked any more than necessary to keep the materials contained within their defined areas. Stockpile heights shall be kept to the minimum necessary.

**AGGREGATE INDUSTRIES AT SHERIFF ROAD
5850 SHERIFF ROAD
CAPITOL HEIGHTS, MARYLAND 20743
PERMIT-TO-OPERATE CONDITIONS
PREMISES No. 033-0934**

RECORD KEEPING

- (a) Records of nozzle inspections, spray bar inspections, site-wide fugitive dust control activities (site watering), loads or quantity of feed materials delivered to the feed hopper shall be maintained. The feed materials shall be recorded on a daily basis. Site-wide fugitive dust control activities shall be recorded as they occur. The nozzles and spray bars shall be inspected at a minimum once per month, and more often as needed. The records shall indicate the date, time, quantities involved (if applicable) and action taken (if necessary).

Part D – Record Keeping and Reporting

- (1) The Permittee shall maintain for at least five (5) years, and shall make available to the Department upon request, records of the following information for the RAP crushing, screening and fractionation plant:
 - (a) The amount, in tons, of RAP crushed and screened each month;
 - (b) Fugitive Dust Plan as approved by the Department;
 - (c) All opacity observation test results; and
 - (d) A log of each periodic inspection of the wet suppression systems including dates and any corrective actions taken.
- (2) The Permittee shall maintain at the facility for at least five (5) years, and shall make available to the Department upon request, records necessary to support annual certifications of emissions and demonstrations of compliance for toxic air pollutants. Such records shall include, if applicable, the following:
 - (a) mass emissions rates for each regulated pollutant, and the total mass emissions rate for all regulated pollutants for each registered source of emissions;
 - (b) accounts of the methods and assumptions used to quantify emissions;
 - (c) all operating data, including operating schedules and production data, that were used in determinations of emissions;

**AGGREGATE INDUSTRIES AT SHERIFF ROAD
5850 SHERIFF ROAD
CAPITOL HEIGHTS, MARYLAND 20743
PERMIT-TO-OPERATE CONDITIONS
PREMISES No. 033-0934**

- (d) amounts, types, and analyses of all fuels used;
 - (e) any records, the maintenance of which is required by this permit or by State or federal regulations, that pertain to the operation and maintenance of continuous emissions monitors, including:
 - (i) all emissions data generated by such monitors;
 - (ii) all monitor calibration data;
 - (iii) information regarding the percentage of time each monitor was available for service; and
 - (iv) information concerning any equipment malfunctions.
 - (f) information concerning the operation, maintenance, and performance of air pollution control equipment and compliance monitoring equipment, including:
 - (i) identifications and descriptions of all such equipment;
 - (ii) operating schedules for each item of such equipment;
 - (iii) accounts of any significant maintenance performed;
 - (iv) accounts of all malfunctions and outages; and
 - (v) accounts of any episodes of reduced efficiency.
 - (g) limitations on source operation or any work practice standards that significantly affect emissions; and
 - (h) other relevant information as required by the Department.
- (3) The Permittee shall submit to the Department by April 1 of each year a certification of emissions for the previous calendar year. The certifications shall be prepared in accordance with requirements, as applicable, adopted under COMAR 26.11.01.05 – 1 and COMAR 26.11.02.19D.
- (a) Certifications of emissions shall be submitted on forms obtained from the Department.

**AGGREGATE INDUSTRIES AT SHERIFF ROAD
5850 SHERIFF ROAD
CAPITOL HEIGHTS, MARYLAND 20743
PERMIT-TO-OPERATE CONDITIONS
PREMISES No. 033-0934**

- (b) A certification of emissions shall include mass emissions rates for each regulated pollutant, and the total mass emissions rate for all regulated pollutants for each of the facility's registered sources of emissions.
- (c) The person responsible for a certification of emissions shall certify the submittal to the Department in the following manner:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."
- (4) The Permittee shall submit to the Department by April 1 of each year a written certification of the results of an analysis of emissions of toxic air pollutants from the Permittee's facility during the previous calendar year. Such analysis shall include either:
 - (a) a statement that previously submitted compliance demonstrations for emissions of toxic air pollutants remain valid; or
 - (b) a revised compliance demonstration, developed in accordance with requirements included under COMAR 26.11.15 & 16, that accounts for changes in operations, analytical methods, emissions determinations, or other factors that have invalidated previous demonstrations.
- (5) The Permittee shall report, in accordance with requirements under COMAR 26.11.01.07, occurrences of excess emissions to the Compliance Program of the Air and Radiation Administration.