

February 19, 2026

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VIA E-FILINGCynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001ENTERED
Office of Chief Counsel
February 19, 2026
Part of
Public Record*Re: CSX Transportation, Inc.—Petition for a Declaratory Order,
Finance Docket No. 36886*

Dear Ms. Brown:

CSX Transportation, Inc. (“CSXT”) respectfully requests leave to submit this brief letter response to certain assertions in Maryland Department of the Environment’s (“MDE’s”) reply to CSXT’s Petition. There is good cause for the Board to accept this response, which CSXT is filing within three weeks of MDE’s Reply and is limited to clarifying new points made in MDE’s reply.¹

First, MDE argues this dispute is “premature” because CSXT has not exhausted its administrative remedies before the Maryland Office of Administrative Hearings. *See* MDE Reply at 12-15. Even though MDE cites the Maryland ALJ’s decision to stay the state administrative proceeding in its introductory recitation of facts, *see* MDE Reply at 12, it ignores the ALJ’s stay decision entirely in its exhaustion argument that follows. The ALJ found this Board has jurisdiction over the permissibility of Part D of the Permit under ICCTA and agreed it should wait to address state law issues until after CSXT’s Petition is decided. “It is clear from [49 U.S.C. § 10501(b)] that the STB has exclusive jurisdiction over operation and facilities of railroad carriers. Part D of the Permit by MDE involves the operation and facilities of [CSXT] by requiring a windscreen to cover any coal dust at their facilities. The building of any windscreen would impact the operation of [CSXT’s] facilities.” Ex. L to MDE Reply at 4 (ALJ’s January 13, 2026 Order).

Second, MDE asserts the Permit’s “flexibility” means its conditions are not preempted by ICCTA. *See* MDE Reply at 31. But the opposite is true. The Part D permit conditions provide discretion and grant flexibility to MDE by giving it the right to approve the windscreen material, design, schedule, and location. *See* CSXT Pet. Ex. 2, at 9. The state agency therefore has final say over the construction and operations of the rail facility. A permit granting this level of discretion to local permitting authorities is preempted. *See Vermont Ry. v. Town of Shelburne*, No. 2:16-CV-

¹ *See Rio Grande Pac. Corp.—Continuance in Control Exemption—Colo., Midland & Pac. Ry.*, Docket No. FD 36470, at 2 n.4 (STB served Jan. 29, 2021) (accepting reply to reply “in the interest of having a more complete record”).

16, 2016 WL 3629081, at *10 (D. Vt. June 29, 2016) (obligations that “depend[] upon the discretionary rulings of a . . . local agency” are preempted).

MDE’s discretion to require and approve the terms of a large-scale construction project (what it calls “flexibility”) further undermines any argument the Permit conditions are “federalized.” The requirement to build a windscreen to the state’s liking is nowhere found in the State Implementation Plan (“SIP”), and the SIP provides no regulatory guidance or guardrails that constrain MDE’s discretion. Because EPA has not approved the conditions at issue, it does not carry the force of federal law. *See BNSF Ry. v. Clark Cnty*, 11 F. 4th 961, 968 (9th Cir. 2021).

Third, although there is no need for the Board to weigh the reasonableness of the Part D permit conditions because the conditions are preempted facially, CSXT notes for the record that it strongly disagrees with MDE’s claims regarding coal dust impacts, several of which MDE makes for the first time in its Reply. CSXT has submitted expert reports refuting MDE’s suggestion that coal storage and handling operations at the Curtis Bay facility impact air quality or result in the visible accumulation of dark dust in the surrounding areas. *See* CSXT Pet. Ex. 3 at Appx. 2 (“CSXT Expert Response to Collaborative Report”), Appx. 3 (“Fenceline Monitoring Summary”), and Appx. 4 (“RJ Lee Group Expert Response to Aubourg Article”). For example:

- A. CSXT’s fenceline monitoring data proves the Terminal’s existing dust control measures are consistent with Maryland law and EPA best practices (CSXT Pet. Ex. 3 at 14-15, 23-24 and Appx. 1 (Trinity PTO Process Assessment)) by keeping particulate matter emissions at levels protective of human health. CSXT Pet. Ex. 3 at 30 and Appx. 3 (Fenceline Monitoring Summary), Appx. 14 (MDE PTC Fact Sheet at 4), Appx. 15 (“Toxic Air Pollutant Modeling and Report”).
- B. The community-led research study authored by environmental justice groups opposed to the Terminal fails to demonstrate the “persistent presence of coal dust” in the Curtis Bay community. MDE Reply at 5, 33-34. This study and similar community-led studies cited for the first time in the MDE Reply found coal dust present only in trace concentrations in the nearby community and not visible to the naked eye, which does not justify additional dust control measures like the windscreen. *See* MDE Reply at 8; CSXT Pet. Ex. 3 at Appx. 4 (RJ Lee Group Expert Response to Aubourg Article).
- C. MDE claims fine particulate matter was measured at levels above the annual national ambient air quality standard (“NAAQS”) for PM_{2.5} at certain times.² MDE Reply at 8-9.

² The annual NAAQS for PM_{2.5} was lowered from 12 to 9 micrograms per cubic meter in February 2024. EPA has indicated it is reconsidering the standard (<https://www.epa.gov/newsreleases/trump-epa-announces-path-forward-national-air-quality-standards-particulate-matter>) and recently requested that the DC Circuit vacate the 9 micrograms per cubic meter standard. *See* Respondents’ Motion for Vacatur, *Commonwealth of Kentucky, et al. v. U.S. E.P.A., et al.*, No. 24-1050 (D.C. Cir. Nov. 24, 2025).

Federal regulations state that PM2.5 data from a single facility's fenceline monitoring network are not eligible for comparison to the annual PM2.5 NAAQS. *See* 40 C.F.R. § 58.30(a) ("PM2.5 measurement data from monitors that are not representative of area-wide air quality but rather of relatively unique micro-scale, or localized hot spot, or unique middle-scale impact sites are not eligible for comparison to the annual PM2.5 NAAQS"). MDE's analysis ignores accepted methodologies established by EPA for demonstrating compliance with the NAAQS and fails to account for all other sources of PM2.5 in the area, including a coal-fired power plant, incinerators, refineries, concrete crushing plants, and mobile sources. CSXT Pet. Ex. 3 at Appx. 2-3. When analyzed in accordance with federal regulations and EPA guidance, the data from CSXT's fenceline monitoring system show the existing dust control measures adequately control particulate matter from the coal piles. CSXT Pet. Ex. 3 at 2, 18-19, 22 and Appx. 3.

For the reasons stated above and in CSXT's Petition, the Board should reject MDE's argument that the Petition is premature or that the permit's "flexibility" aids its position. The Permit's Part D conditions grant MDE impermissible discretionary authority over rail facilities and are therefore preempted.

CSXT respectfully requests that the Board accept this response and grant its Petition for Declaratory Order.

Sincerely,

/s/ Tom Dupree

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