BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

IN RE:	:	
	:	
STATE OF MARYLAND,	:	CONSENT AGREEMENT AND FINAL ORDER
MARYLAND DEPARTMENT OF	:	
TRANSPORTATION,	:	
MARYLAND TRANSIT	:	
ADMINISTRATION,	:	
Respondent.	:	
	:	
	:	DOCKET No. CWA-03-2006-0019
	:	DOCKET No. RCRA-03-2006-0019
Facility Addresses:	:	
	:	
1515 Washington Boulevard	:	
5801 Wabash Avenue	:	
Baltimore, Maryland 21230	:	

I. STATUTORY AUTHORITY

This Consent Agreement and the accompanying Final Order (collectively CAFO) are entered into by the Director, Office of Enforcement, Compliance and Environmental Justice, United States Environmental Protection Agency, Region III (Complainant or EPA), and the State of Maryland, (the State), Maryland Department of Transportation (MDOT) Maryland Transit Administration (MTA)(collectively the Respondent), pursuant to Sections 309(g)(2)(B) and 311(b)(6) of the Clean Water Act, (CWA), 33 U.S.C. §§ 1319(g)(2)(B) and 1321(b)(6), Sections 3008(a)(1) and 9006 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6928(a)(1) and 6991e, and in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,* (Consolidated Rules), 40 C.F.R. Part 22.

II. PRELIMINARY STATEMENTS

1. On December 7, 2005, Complainant issued an Administrative Complaint and Notice of Opportunity for Hearing, Docket Number CWA-3-2006-0019 and RCRA-03-2006-0019. On January 4, 2006, Complainant subsequently issued an Amended Complaint which changed a permit number in Count III of the Complaint, but did not otherwise change any of the original allegations made in the Complaint.

2. On August 24, 2006, Complainant filed a proposed Second Amended Complaint to add two counts (the Second Amended Complaint is herein referred to as "the Complaint").

3. The Complaint alleged that Respondent violated the regulations promulgated in accordance with:

   a. Section 311(j) of the CWA, 33 U.S.C. § 1321(j);

   b. Section 402 of the CWA, 33 U.S.C. § 1342;

   c. RCRA Subtitles C and I, 42 U.S.C. §§ 6921-6939e, and 6991-6991*i*, the regulations promulgated thereunder and, the authorized State of Maryland Hazardous Waste Management Regulations (MdHWMR) set forth at the Code of Maryland Regulations ((COMAR), Title 26, Subtitles 10 and 13 *et seq.*).

4. EPA published notice of the commencement of the administrative action and the proposed penalty assessment brought under the authority of the Clean Water Act, and received no comments thereto. The notice of commencement of the administrative action was published pursuant to the Consolidated Rules on the EPA Region III website.

5. For the purposes of this CAFO, Respondent does not contest the jurisdictional allegations of the Complaint. Respondent expressly reserves its right to contest the jurisdictional arguments under RCRA or CWA in any other enforcement proceeding commenced against Respondent by EPA.

6. Respondent neither admits nor denies the specific factual allegations and legal conclusions contained in the Complaint or herein.

7. For purposes of this CAFO only, Respondent agrees not to contest EPA's jurisdiction to execute this Consent Agreement, the issuance of the Final Order, or the enforcement thereof.

8. For purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing under Sections 3008(b) and 9006 of RCRA, 42 U.S.C. §§ 6928(b) and 6991e, and Sections 309(g) and 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. §§ 1319(g) and 1321(b)(6)(B)(ii), on any issue of law or fact in the Complaint, and waives its right to appeal the Final Order.

9. Each party to this CAFO shall pay its own costs and attorney's fees associated with this proceeding having the docket numbers of CWA-03-2006-0019 and RCRA-03-2006-0019.

10. Respondent will implement the measures contained in the Settlement Conditions Document (SCD) which is attached hereto as Appendix B and made a part hereof as if fully recited herein in order to come into compliance with all applicable Federal environmental laws and

regulations at all facilities owned and/or operated by Respondent Maryland Transit Administration as listed in Appendix B.

11. The term "days" as used herein shall mean calendar days, unless otherwise specified.

12. The facilities which are subject of the Complaint are the Washington Boulevard Complex (Washington Blvd.), 1515 Washington Boulevard, Baltimore, Maryland 21230, and the Northwest Maintenance Shop-METRO (Wabash Ave.), 5801 Wabash Avenue, Baltimore, Maryland 21224. Respondent agrees that EPA may inspect all facilities owned or operated by Respondent at any reasonable time during business hours and after giving Respondent notice to determine whether Respondent's obligations under this CAFO are being implemented in conformity with the representations made herein. This right of entry is in addition to, and in no way limits, any other rights that may be available to EPA under any law or regulation.

13. Pursuant to 40 C.F.R. § 2.203, Respondent may submit a claim of confidentiality for any document or information submitted under this CAFO. Failure to make a confidentiality claim at the time the document is submitted shall constitute a waiver of such claim. Respondent shall not assert a claim of confidentiality with respect to any sampling, monitoring or analytical data.

14. Respondent consents to the issuance of this CAFO, and agrees to comply with its terms.

15. The citations to COMAR contained herein refer to the EPA authorized Maryland regulations.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

16. The Findings of Fact and Conclusions of Law as set forth in the Complaint are incorporated into this Consent Agreement as if fully set forth at length herein subject to paragraphs 5 and 6 above.

IV. CIVIL PENALTY

17. Based on the foregoing and having taken into account the penalty factors set forth at Sections 3008(a)(3) and 9006e of RCRA, 42 U.S.C. §§ 6928(a)(3) and 6991e, and the penalty factors set forth at Sections 309(g)(3) and 311(b)(8) of the CWA, 33 U.S.C. §§ 1319(g)(3) and 1321(b)(8), Complainant has determined that the total appropriate civil penalty for the violations alleged in the Complaint is $172,207.00, which shall be paid in accordance with paragraphs 19 and 21 of this CAFO.

18. The penalty factors were applied to the particular facts and circumstances of this case with specific reference to EPA's Civil Penalty Policy for Section 311(b)(3) and Section 311(j)

of the Clean Water Act, August 1998, Interim Clean Water Act Settlement Penalty Policy, March 1, 1995, RCRA Civil Penalty Policy, June 2003, Penalty Guidance for Violations of UST Regulations, and the Civil Monetary Penalty Adjustment Rule, 40 C.F.R. Part 19.

19. RESPONDENT HEREBY CONSENTS to pay $64,846.00 as a civil penalty in settlement of the Section 311(j) of the CWA, 33 U.S.C. § 1321(j), violations alleged in the Complaint, in one installment, which is due and payable 60 days after the effective date of this CAFO, by submitting a check, payable to "Oil Spill Liability Trust Fund-311," to:

U.S. Environmental Protection Agency
P.O. Box 371099M
Pittsburgh, PA 15251

or via overnight delivery to:

Mellon Client Service Center,
ATTN: Shift Supervisor
Lockbox 371099M Account 9109125
500 Ross Street,
Pittsburgh, PA 15262-0001

20. Failure by Respondent to pay the penalty assessed in paragraph 19 by the Final Order in full by its due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs for collection proceedings and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

21. RESPONDENT HEREBY CONSENTS to pay $107,361.00 as a civil penalty, in settlement of the Section 402 of the CWA, 33 U.S.C. § 1342, and RCRA violations alleged in the Complaint, in one installment, which is due and payable (60) sixty days after the effective date of this CAFO by submitting a check payable to the "Treasurer, United States of America" via regular mail to:

U.S. Environmental Protection Agency
Regional Hearing Clerk
P.O. Box 371099M
Pittsburgh, PA 15251

or via overnight delivery to:

Mellon Client Service Center,
ATTN: Shift Supervisor
Lockbox 371099M Account 9109125
500 Ross Street,

Pittsburgh, PA 15262-0001

22. Respondent shall note on the instrument of each payment the title and docket numbers of this case. Respondent shall send notice of each payment, along with a copy of the instrument of each payment, to:

Lydia Guy (3RC00) Regional Hearing Clerk U.S. EPA, Region III 1650 Arch Street Philadelphia, PA 19103-2029	-and-	Joyce A. Howell (3EC00) Sr. Counsel U.S. EPA, Region III 1650 Arch Street Philadelphia, PA 19103-2029

23. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty set forth in paragraph 21 is not paid as directed:

    a. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest on outstanding debts owed to the United States as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this Consent Agreement and Final Order shall result in the assessment of interest.

    b. Interest on the civil penalty assessed in paragraph 21 of this CAFO will begin to accrue on the Effective Date of this CAFO as defined in paragraph 65, below. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within sixty (60) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

V. COMPLIANCE ORDER

24. Pursuant to the authority of Sections 3008(a) and 9006 of RCRA, 42 U.S.C. §§ 6928(a) and 6991e, Respondent is hereby ordered to perform the Compliance Tasks listed in paragraphs 25 through 35 below. Within ninety (90) days after the Effective Date of this CAFO, as defined in paragraph 65 of this CAFO, Respondent shall certify to the completion of each of the Compliance Tasks set forth in paragraphs 25 through 35 below. If Respondent completes a Compliance Task prior to the Effective Date of this CAFO, Respondent shall certify completion of such Compliance Task in accordance with paragraph 36 below.

25. Prepare a written contingency plan for the Washington Blvd. Facility which is designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water as specified in COMAR 26.13.05.04 and 40 C.F.R. §§ 262.34(a)(4) and 265.51. Submit the contingency plan to EPA for review and comment within thirty (30) days of the Effective Date of this Consent Agreement. Implement the

contingency plan within ten (10) days of MTA's receipt of written notice of EPA's review and acknowledgement of completion of the contingency plan.

26. Conduct weekly inspections at the Washington Blvd. and Wabash Ave. Facilities in the areas in which the hazardous waste containers are stored, as required by COMAR 26.13.03.05E(1)(g) and maintain an inspection log, as required by COMAR 26.13.03.05E(1)(k).

27. Within thirty (30) days of the Effective Date of this CAFO, develop and implement a training program, as required by COMAR 26.13.03.05E(1)(g), for the Washington Blvd. Facility.

28. Within thirty (30) days of the Effective Date of this CAFO, develop and implement, at the Washington Blvd. and Wabash Ave. Facilities, a system for tracking manifests to comply with the exception reporting requirements of COMAR 26.13.03.06A(3) and a filing system to ensure compliance with COMAR 26.13.03.06A(1) and 40 C.F.R. § 262.40.

29. Within thirty (30) days of the Effective Date of this CAFO, provide cathodic protection for the metal underground storage tanks and piping that is in contact with the ground, consistent with the requirements of COMAR 26.10.03.02 and 40 C.F.R. § 280.21(c), with regard to the federally-regulated USTs that will remain in service after the Effective Date of this CAFO at the Washington Blvd. Facility.

30. Within thirty (30) days of the Effective Date of this CAFO, provide overfill protection, consistent with the requirements of COMAR 26.10.03.01D and 40 C.F.R. § 280.21(d), with regard to the federally-regulated USTs that will remain in service after the Effective Date of this CAFO at the Washington Blvd. Facility.

31. Within thirty (30) days of the Effective Date of this CAFO, comply with the installation standards for underground storage tanks, consistent with COMAR 26.10.03.01E and 40 C.F.R. § 280.20(d), with regard to the federally-regulated USTs that will remain in service after the Effective Date of this CAFO at the Washington Blvd. Facility.

32. Within thirty (30) days of the Effective Date of this CAFO, comply with the release detection requirements of COMAR 26.10.05.01, specifically, release detection that can detect a release from any portion of the tank and the connected underground piping that routinely contains product, with regard to the federally-regulated USTs that will remain in service after the Effective Date of this CAFO at the Washington Blvd. Facility.

33. Within thirty (30) days of the Effective Date of this CAFO, employ methods of release detection for piping consistent with COMAR 26.10.05.05A, with regard to the federally-regulated USTs that will remain in service after the Effective Date of this CAFO at the Washington Blvd. Facility.

34. Within thirty (30) days of the Effective Date of this CAFO: (1) cease storing hazardous waste at the Washington Boulevard Facility except in accordance with a permit or interim status obtained pursuant to RCRA Section 3005, 42 U.S.C. § 6925, COMAR 26.13.03.05E(1) and 40 C.F.R. Part 270 or in accordance with the generator accumulation exemption of 40 C.F.R. § 262.34, including, but not limited to the requirements of 40 C.F.R. § 265.173, including the satellite accumulation rules of COMAR 26.13.03.05E (3) and 40 C.F.R. § 262.34c)(1); (2) Mark containers of hazardous waste clearly and visibly with their accumulation commencement dates in compliance with 40 C.F.R. § 262.34(a)(2) and COMAR 26.13.03.05E(1)(e); and (3) ensure each container of hazardous waste at the Washington Blvd. facility is properly labeled and marked according to COMAR 26.13.03.05.B and C.

35. Within sixty (60) days of the Effective Date of this CAFO, remove or permanently close the diesel fuel USTs at the Washington Blvd. Facility and all federally-regulated USTs at the Wabash Ave. Facility in accordance with the requirements of COMAR 26.10.10 et seq.

36. Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this Compliance Order which discusses, describes, demonstrates, supports any finding or makes any representation concerning Respondent's compliance or non-compliance with any requirements of this Compliance Order shall be certified by the appropriate government official as defined by 40 C.F.R. § 270.11(a)(3) for Respondent.

The certification of the appropriate government official required above shall be in the following form:

I certify that, based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information contained in or accompanying this [type of submission] is true, accurate and complete to the best of my knowledge, information and belief. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: _____
Name: _____
Title: _____

After receipt of a Certification made pursuant to CAFO, EPA will issue a letter to the Respondent's representatives listed in paragraph 37 acknowledging receipt of Respondent's certification of compliance with the regulatory requirements as of the date of the certification.

37. Any notification or submission required by this Compliance Order to be submitted to either party, including, but not limited to, the aforementioned certification, shall be sent via certified mail/return receipt requested or overnight mail commercial delivery service to the attention of the following persons:

For EPA:

Troy Jordan (3EC10)
Office of Enforcement, Compliance and Environmental Justice
United States Environmental Protection Agency - Region III
Suite 304
1060 Chapline St
Wheeling, WV 26003

-and-

Joyce Howell (3EC00) [Cover letter only]
Senior Counsel
Office of Enforcement, Compliance and Environmental Justice
United States Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

For Respondent:

Secretary Robert L. Flanagan
Maryland Department of Transportation
7201 Corporate Center Drive
Hanover, MD 21076

-and-

Deputy Secretary James F. Ports, Jr.
Maryland Department of Transportation
7201 Corporate Center Drive
Hanover, MD 21076

-and-

Denise Ferguson, Principal Counsel
Attorney General's Office
Maryland Department of Transportation
7201 Corporate Drive
Hanover, MD 21076

-and-

Lisa L. Dickerson, MTA Administrator
Maryland Transit Administration
6 St. Paul Street 26th Floor
Baltimore, MD 21202

-and-

R. Earl Lewis, Jr., Deputy Administrator Operations
Maryland Transit Administration
1515 Washington Boulevard
Baltimore, MD 21230

-and-

Ronald Keele, Director Office of Safety and Risk Management
Maryland Transit Administration
1515 Washington Boulevard
Baltimore, MD 21230

-and-

Callista M. Freedman, General Counsel
Maryland Transit Administration
6 St.Paul Street, 12th Floor
Baltimore, MD 21202

PARAGRAPH 38 IS RESERVED

39. Either party may substitute another person to receive notice on its behalf, or change the address to which notices are to be sent, by sending written notification of the substitution or change to the other party.

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

40. Respondent shall fully perform a supplemental environmental project ("SEP"), which the parties agree is intended to secure significant environmental or public health protection and improvements. A description of the SEP is attached as Appendix A to this CAFO and made a part hereof. Respondent shall commence work on the SEP within thirty (30) days of the Effective Date of the CAFO.

41. The total expenditure for the SEP shall be not less than $516,620.00, in accordance with the specifications set forth in Appendix A.

42. Respondent hereby certifies that, as of the Date of this CAFO, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive

relief in this or any other legal proceeding or in compliance with state or local requirements.

43. Respondent shall submit a SEP Completion Report to EPA by June 30, 2009. The SEP Completion Report shall contain the following information:

    (i) A detailed description of the SEP as implemented;

    (ii) A description of any operating problems encountered and the solutions thereto;

    (iii) Itemized costs, documented by copies of purchase orders and receipts or canceled checks;

    (iv) Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO; and

    (v) A description of the environmental and public health benefits resulting from implementation of the SEP.

44. Respondent shall submit quarterly reports ("Periodic SEP Report") on its progress in completing the SEP beginning with the first full calendar quarter following the Effective Date of this CAFO. EPA must receive such quarterly reports for the immediate preceding quarter by no later than the following dates: May 1st, August 1st, November 1st and February 1st.

45. Respondent agrees that failure to submit the SEP Completion Report or any Periodic Report required by paragraphs 43 and 44 above shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to paragraph 50(v) below.

46. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all reports submitted to EPA pursuant to this CAFO, and Respondent shall provide the documentation of any such underlying research and data to EPA within fifteen days of a request for such information. In all documents or reports, including, without limitation, the SEP Completion Report, and the Periodic SEP Report, that are submitted to EPA pursuant to this CAFO, Respondent shall, by the appropriate government official as defined in paragraph 36, sign and certify under penalty of law that the information contained in such documents or reports is true, accurate, and not misleading. The certification shall be as follows:

    > I certify that, based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information contained in or accompanying this [type of submission] is true, accurate and complete to the best of my knowledge, information and belief. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify

[its/their] accuracy, I certify to the best of my knowledge, information and belief under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system or process designed to assure that qualified personnel properly gathered and evaluated the information submitted. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature: _____
Name: _____
Title: _____

47. Following receipt of the SEP Completion Report described in paragraph 43 above, EPA will do one of the following: (i) accept the SEP Completion Report; or (ii) reject the SEP Completion Report and seek stipulated penalties in accordance with paragraph 50 or (iii) notify the Respondent in writing, of deficiencies in the SEP Completion Report and grant Respondent an additional thirty (30) days in which to correct any deficiencies. A proposed rejection of the SEP Completion Report must be based solely upon alleged lack of performance, alleged lack of implementation of the SEP and/or alleged failure to comply with any of the requirements of paragraphs 40, 43, 44, and 50, except as provided in paragraph 50(ii). Respondent may appeal the rejection of the SEP report to the Deputy Regional Administrator, U.S. Environmental Protection Agency, Region III (DRA) within ten days of notice of the rejection of the SEP report by EPA. EPA will be afforded the opportunity to submit a response to Respondent's appeal within ten (10) days of Respondent's appeal. The DRA will make every effort to render a decision within forty (40) days of Respondent's service of the appeal. The decision of the DRA shall be final and binding on the parties.

48. If EPA elects to exercise option (ii) in paragraph 47 above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision to Respondent, which decision shall be final and binding upon Respondent unless Respondent elects to appeal the decision to the Deputy Regional Administrator, as provided by paragraph 47, except as provided in paragraph 49. Respondent agrees to comply with any requirements imposed by EPA to correct such deficiency or failure, as set out in the written notification of deficiency or disapproval, to comply with the terms of the SEP as set out in Appendix A. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with paragraph 50 herein.

49. In the event that the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Section VII of this CAFO.

VII. STIPULATED PENALTIES

50. In the event that Respondent fails to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP described in Appendix A and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Appendix A, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

(i) Except as provided in subparagraph (ii) immediately below, for a SEP which has not been completed satisfactorily pursuant to paragraphs 40, 41 and 42, Respondent shall pay a stipulated penalty to the United States in the amount of $556,346.00.

(ii) If the SEP is not completed satisfactorily, but the Respondent has: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least ninety percent (90%) of the amount of money which was required to be spent was expended on the SEP, Respondent shall not pay any stipulated penalty.

(iii) If the SEP is satisfactorily completed, but the Respondent spent less than ninety percent (90%) of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of $55,634.00.

(iv) If the SEP is satisfactorily completed, and the Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not pay any stipulated penalty.

(v) For failure to submit the SEP Completion Report required by paragraph 43 above, Respondent shall pay a stipulated penalty in accordance with the schedule below for each day after June 30, 2009 for which the SEP Completion Report is not submitted:

Period of Noncompliance	Penalty per Day
1st through 7th Day	$100.00
8th through 14th Day	$150.00
After 14 Days	$500.00

(vi) For failure to submit any other report required by paragraph 44 above, Respondent shall pay a stipulated penalty in accordance with the schedule below for each day after the report was originally due until the report is submitted.

Period of Noncompliance	Penalty per Day
1st through 7th Day	$50.00
8th through 14th Day	$75.00
After 14 Days	$100.00

51. Stipulated penalties for subparagraphs 50(v) and 50(vi) above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of completion of the activity.

52. Respondent shall pay stipulated penalties within thirty (30) days of receipt of written demand by EPA for such penalties. Stipulated penalties shall be paid in accordance with provisions of paragraph 21 above. Interest shall be paid as stated in paragraph 23 above.

53. If any event occurs which causes or may cause delays in the completion of the SEP as required under this CAFO, Respondent shall notify Complainant in writing within ten (10) days of the delay or Respondent's knowledge of the anticipated length of delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of Respondent's right to request an extension of its obligation under this CAFO based on such incident.

54. If the parties agree that the delay or anticipated delay in compliance with this CAFO has been or will be caused by circumstances entirely beyond the control of Respondent the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.

55. In the event that the EPA does not agree that a delay in achieving compliance with the requirements of the SEP has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its decision and any delays in the completion of the SEP shall not be excused. Stipulated penalties begin to accrue upon failure of performance. Respondent may appeal EPA's decision in accordance with the procedure set forth in paragraph 47 of this CAFO.

56. The burden of proving that any delay is caused by circumstances entirely beyond the control of the Respondent shall rest with Respondent. Increased costs or expenses associated with the implementation of actions called for by this CAFO shall not, in any event, be a basis for changes in this CAFO or extensions of time under paragraph 53. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

57. In any public statement referring to this SEP, Respondent shall include language that the SEP was undertaken in connection with a settlement of an enforcement action taken by EPA. This paragraph does not compel Respondent to make any public statement concerning the implementation of the SEP.

VIII. EFFECT OF CONSENT AGREEMENT AND FINAL ORDER

58. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and/or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

59. Full payment of the civil penalty set forth in paragraphs 19 and 21 of this Consent Agreement, above, shall constitute full and final satisfaction for Respondent's liability for all federal civil penalties for the specific violations alleged in the Complaint. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This CAFO is not intended, and shall not be construed, to resolve any claim for criminal sanctions now pending or that may be sought in the future, and shall not limit the right of the United States to pursue criminal sanctions for any violation of law. In addition, Complainant reserves any rights and remedies available to it under the CWA and RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

60. EPA shall have the right to institute new and separate actions to recover civil penalties for the violations alleged herein if EPA obtains evidence that the information provided and/or representations made by Respondent to EPA regarding the matters at issue in this CAFO are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, EPA may have under law or equity in such event.

61. Subject to the provisions of paragraphs 5 through 8 above, Respondent shall have the right to assert any and all appropriate defenses to any subsequent actions filed by EPA pursuant to paragraph 60, including, but not limited to, jurisdiction.

62. This CAFO shall apply to and be binding upon the parties hereto, their officers, directors, employees, agents, successors and assigns.

63. The undersigned representatives of Respondent certify that s/he is fully authorized by Respondent to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it, after obtaining the approval of the Maryland Board of Public Works. Respondent's expenditures are subject to appropriations by the Maryland General Assembly as provided in Section 3-216 (d) of the Transportation Article, as amended and supplemented. Failure to obtain appropriations does not excuse MTA's obligation of

performance under this CAFO. The approval of the Maryland Board of Public Works is indicated by Appendix C to this CAFO.

64. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO or one or more of its terms and conditions is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his or her designee, then the entire CAFO shall be null and void.

65. The Effective Date of this CAFO is 30 days after the date on which the Final Order is filed with the Regional Hearing Clerk.

For RESPONDENT:

By: _____ Date: _____
Robert L. Flanagan, Secretary
Maryland Department of Transportation

FOR FORM AND LEGAL SUFFICIENCY:

_____
Denise Ferguson, Principal Counsel, MDOT

By: _____ Date: _____
Lisa L. Dickerson, Administrator
Maryland Transit Administration

FOR FORM AND LEGAL SUFFICIENCY:

_____
Callista Freedman, General Counsel, MTA

For COMPLAINANT:

By: _____ Date: _____

Samantha Phillips Beers, Director
Office of Enforcement, Compliance
and Environmental Justice
U.S. Environmental Protection Agency, Region III

By: _____ Date: _____

Joyce A. Howell
Senior Counsel
Office of Enforcement, Compliance
and Environmental Justice
U.S. Environmental Protection Agency, Region III

APPENDIX A

(SUPPLEMENTAL ENVIRONMENTAL PROJECT DESCRIPTION)

APPENDIX B

(SETTLEMENT CONDITIONS DOCUMENT)

APPENDIX C

(APPROVAL BY BOARD OF PUBLIC WORKS)

APPENDIX B

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In the Matter of:	)	
	)	
State of Maryland, Maryland	)	U.S. EPA Docket Numbers
Department of Transportation,	)	RCRA-03-2006-0019
Maryland Transit Administration	)	CWA-03-2006-0019
	)	
Respondent,	)	
	)	
MTA Facility No. 1	)	
Washington Boulevard Complex	)	
(Washington Blvd.)	)	
1515 Washington Blvd.	)	
Baltimore, Maryland 21230	)	
	)	
MTA Facility No. 2	)	
Northwest Maintenance Shop-METRO	)	
(Wabash Ave.)	)	
5801 Wabash Ave.	)	
Baltimore, Maryland 21224	)	
	)	
MTA Facility No. 3	)	
Kirk Bus Division	)	
2226 Kirk Ave.	)	
Baltimore, Maryland 21217	)	
	)	
MTA Facility No.4	)	
Eastern Bus Division	)	
201 Oldham St.	)	
Baltimore, Maryland 21224	)	
	)	
MTA Facility No. 5	)	
Northwest Bus Division	)	
4401 Mt. Hope Dr.	)	
Baltimore, Maryland 21224	)	
	)	
MTA Facility No. 6	)	
North Avenue Light Rail Maintenance	)	
349 W. North Ave.	)	
Baltimore, Maryland 21217	)	

MTA Facility No. 7 Cromwell Light Rail Maintenance 7378 Baltimore-Annapolis Blvd. Glen Burnie, Maryland 21061	)
MTA Facility No. 8 MARC Storage-Frederick County 7900 Reich Ford Rd. Frederick, Maryland 21704	)
MTA Facility No. 9 MARC Maintenance-Martins\Middle River 2700 Eastern Blvd. Middle River, Maryland 21220	)
MTA Facility No. 10 Old Court Maintenance Shop-METRO 4300 Old Court Rd. Pikesville, Maryland 21208	)
MTA Facility No. 11 Brunswick MARC Maintenance Bldg. 100 South Maple Ave. Brunswick, Maryland 21716	)
MTA Facility No. 12 Federalsburg Maintenance Yard 106 Railroad Ave. Federalsburg, Maryland 21632.	)

SETTLEMENT CONDITIONS DOCUMENT

I. INTRODUCTION

1. This Settlement Conditions Document (SCD) is part of and incorporated into the attached Consent Agreement and Final Order (CAFO) by and between the U.S. Environmental Protection Agency - Region III (Agency or EPA) and the State of Maryland, Maryland Department of Transportation (MDOT), Maryland Transit Administration (MTA) in the above-captioned administrative enforcement action. The CAFO together with this SCD resolves violations of

Section 311(j) of the CWA, 33 U.S.C. § 1321(j); Section 402 of the CWA, 33 U.S.C. § 1342; RCRA Subtitles C and I, 42 U.S.C. §§ 6921-6939e, and 6991-6991i, the regulations promulgated thereunder and the authorized State of Maryland Hazardous Waste Management Regulations (MdHWMR) set forth at the Code of Maryland Regulations (COMAR), Title 26, Subtitles 10 and 13 et seq.) at MTA's facilities located at 1515 Washington Boulevard and 5801 Wabash Avenue, Baltimore, Maryland. The purpose of this document is to set forth the terms, conditions and tasks MTA will undertake in implementing a Multi-Facility, Multi-Media Compliance Audit (Audit) which MTA has agreed to perform as part of the settlement of the above-captioned matter.

2. MTA agrees to come into compliance with federal and state environmental statutory and regulatory requirements.

3. MTA agrees to use the EPA Audit Protocols to evaluate compliance with the statutory and regulatory requirements set forth in paragraph 5. For the Clean Air Act, MTA will use the Maryland Part 70 Operating Permit Initial Application referenced in Appendix D.

II. SETTLEMENT CONDITIONS

A. THE MULTI-MEDIA, MULTI-FACILITY COMPLIANCE AUDIT

4. The Audit described herein is intended and designed, *inter alia*, to advance the protection of human health and the environment, a stated goal of the Clean Water Act (CWA) and the Resource Conservation and Recovery Act (RCRA).

5. The Audit must cover all statutory and regulatory requirements listed below, unless otherwise limited by paragraph 6:

a. Clean Air Act: Standards of Performance for New Stationary Sources (40 C.F.R. Part 60); National Emission Standards for Hazardous Air Pollutants (40 C.F.R. Part 61); National Emission Standards for Hazardous Air Pollutants for Source Categories (40 C.F.R. Part 63); Chemical Accident Prevention Provisions (40 C.F.R. Part 68); Title V Permits (40 C.F.R. Part 70); Mobile Sources, (40 C.F.R. Part 85), Protection of Stratospheric Ozone (40 C.F.R. Part 82); Maryland State Implementation Plan, including New Source Review Regulations (40 C.F.R. 52.1070 (Subpart V), COMAR 26.11.01 et seq.

b. Clean Water Act: Spill Prevention, Control, and Countermeasures (40 C.F.R. Part 112); The National Pollutant Discharge Elimination System Permits including storm water management (40 C.F.R. Part 122); General Pretreatment Regulations (40 C.F.R. Part 403).

c. Safe Drinking Water Act: National Primary and Secondary Drinking Water Regulations (40 C.F.R. Parts 141 and 143).

d. Federal Insecticide, Fungicide and Rodenticide Act: Worker Protection Standard (40 C.F.R. Part 170); Experimental Use Permits (40 C.F.R. Part 172).

e. Resource Conservation and Recovery Act: The provisions of Maryland's hazardous waste management program, set forth at COMAR Title 26 Subtitle 13 et seq. and the provisions of Maryland's Underground Storage Tank program, set forth at COMAR Title 256 Subtitle 10 et seq. (Hazardous Waste Management System, Used Oil Handling, Underground Storage Tanks (40 C.F.R. Parts 260-266, 268, 273, 279, 280).

f. Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and Emergency Planning, and Community Right-to-Know Act (EPCRA): Designation, Reportable Quantities, and Notification (40 C.F.R. Part 302); Emergency Planning and Notification (40 C.F.R. Part 355); Hazardous Chemical Reporting: Community Right-to-Know (40 C.F.R. Part 370); Toxic Chemical Release Reporting: Community Right-to-Know (40 C.F.R. Part 372).

g. Toxic Substances Control Act (TSCA): Lead-Based Paint Poisoning Prevention (40 C.F.R. Part 745); Polychlorinated Biphenyls ("PCBs") Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; (40 C.F.R. Part 761); Asbestos (40 C.F.R. Part 763).

6. MTA agrees to perform an Audit of all of its facilities listed below:

MTA Facility No. 1
Washington Blvd. Complex (Washington Blvd.) (TSCA, CERCLA, EPCRA only)

MTA Facility No. 2
Northwest Maintenance Shop-METRO (Wabash Ave.) (TSCA, CERCLA, EPCRA only)

MTA Facility No. 3
Kirk Bus Division

MTA Facility No. 4
Eastern Bus Division

MTA Facility No. 5
Northwest Bus Division

MTA Facility No. 6

North Avenue Light Rail Maintenance

MTA Facility No. 7
Cromwell Light Rail Maintenance

MTA Facility No. 8
MARC Storage-Frederick County

MTA Facility No. 9
MARC Maintenance-Martins\Middle River

MTA Facility No. 10
Old Court Maintenance Shop-METRO

MTA Facility No. 11
Brunswick MARC Maintenance Bldg.

MTA Facility No. 12
Federalsburg Maintenance Yard

B. DESCRIPTION OF THE AUDIT

7. MTA shall retain an independent third party (the Auditor) to perform the Audit of each of MTA's facilities listed in Section II, above.

8. At a minimum, the Auditor selected by MTA for performance of the Audit shall:

a. have a bachelor's degree and no less than 3 years experience in performing compliance audits for the environmental statutes and regulations listed in Section II, above;

b. have a trained and experienced staff for the performance of such audits;

c. will not perform any Audit activities with regard to prior work subject to the Audit activities identified in paragraphs 9-10, performed for MTA; and

d. not have any conflict of interest that will compromise, in any way, the performance of the Audits required by this SCD. MTA, through the Maryland regulations governing procurement, Code of Maryland Regulations, Title 21, will determine whether any

potential Auditor has a conflict of interest that will disqualify that party from performing the Audits required by this SCD.

C. THE AUDIT PLAN

9. MTA shall create an Audit Plan that satisfies the statutory and regulatory requirements provided in paragraph 5. The Audit Plan will satisfy the requirements under this SCD and include: (a) a projected schedule; (b) milestones for performance; and (c) a detailed description of all tools to be used during the Audit.

10. In addition, the Audit Plan will provide for:

a. a compliance audit of the facilities listed in paragraph 6 of this SCD;

b. Quarterly Audit Reports in accordance with Section III;

c. a schedule identifying the facilities that will be audited in each Quarter of the projected Audit period; and

d. a Final Audit Report in accordance with paragraphs 19-21.

11. The Parties acknowledge that MTA provided its draft RFP outlining the scope of work for the audits to EPA for review and comments prior to MTA procuring the Auditor(s) so that EPA may ensure that the Auditor(s) selected will meet the qualifications set forth in paragraph 8 of this SCD.

12. MTA shall provide EPA with its Audit Plan, name and address of the Auditor(s) MTA has selected to conduct the Audit at MTA's Facilities, documentation that such Auditor(s) satisfies the requirements of paragraphs 7 and 8 of this SCD and a copy of the contract(s) entered into by MTA with the Auditor(s) within thirty (30) days of issuing the notice to proceed by

March 15, 2007, but no later than June 15, 2007, with every effort to award by the earliest possible date.

13. Upon completion of a review by EPA of the Audit Plan, EPA, in its sole discretion, shall either: (a) notify MTA in writing of EPA's acceptance of the Audit Plan as proposed by MTA, or (b) notify MTA in writing of EPA's non-acceptance. If EPA rejects any portion or all of the Audit Plan, EPA shall state the reasons for such rejection and shall provide to MTA in writing a reasonable time in which to make a new submittal. If the MTA fails to revise and re-submit any or all of the items raised by EPA within thirty (30) days, unless otherwise agreed upon by the Parties, after receipt of EPA's non-acceptance of the Audit Plan, EPA shall have the right to terminate this SCD by providing written notice to MTA and EPA shall have the right to seek and collect the maximum penalty allowed by law for any and all violations of federal environmental law at any of MTA's facilities. If EPA's non-acceptance of MTA's submission(s) requires MTA to repeat a procurement, then the timetable for re-submission will be adjusted by the time required by MTA to perform a new procurement.

D. <u>THE AUDIT</u>

14. MTA shall begin the Audit within seven business days from EPA's written acceptance of the Audit Plan.

15. Starting from the day that MTA begins the Audit pursuant to paragraph 14 above, MTA shall have 365 calendar days to complete the Audit under this SCD.

16. The scope of the audit for each facility shall cover the period beginning December 7, 2004 through the completion of the audit. The completion date of the audit for each facility does not include the corrective measures for Areas of Non-Compliance (AONs) described as Part III of this SCD.

17. MTA shall fully cooperate with requests made by the Auditor concerning performance of the Audit and preparation of the Quarterly Audit Reports and the Final Audit Report referenced in Section III of this SCD.

E. CORRECTIVE MEASURES

18. MTA shall immediately initiate any and all measures necessary to correct any AON and remediate any harm caused or threatened by such AON discovered during the course of the performance of the Audit, and institute effective measures to ensure that any such AON does not reoccur in the future. Nothing in this SCD shall relieve MTA of any obligation imposed by any applicable federal, state and/or local laws and requirements.

III. REPORTS, DOCUMENTATION AND NOTIFICATION

A. QUARTERLY AUDIT REPORTS

19. Beginning with the first full calendar quarter following the Effective Date of the CAFO MTA shall submit to EPA Quarterly Audit Reports regarding its performance of the Audit as proposed in the Audit Plan and Schedule described in Section II, above. Thereafter, EPA must receive quarterly reports for the immediate preceding quarter by no later than the following dates: May 1, August 1, November 1, and February 1. The Final Audit Report shall be subject to the additional requirements set forth in paragraph 21. The Final Audit Report will be submitted no later than sixty (60) days after the completion of the Final Audit.

20. Each Quarterly Audit Report, including the Final Audit Report, submitted to EPA shall be the original Audit report submitted by the Auditor, and contain the following information:

a. the name and address of each Facility audited by the Auditor during the quarter;

b. a description of the information reviewed by the Auditor to perform the Audit to satisfy the requirements of paragraph 5;

c. a statement indicating whether any AON were discovered during the Audit;

d. a detailed description of each AON found at each Facility, including the days of noncompliance with the regulatory requirement;

e. a description of any actions taken by MTA to correct any such AON, to remediate any harm caused or threatened by such AON and/or to prevent the reoccurrence of such AON at such Facility;

f. a description of any problems or difficulties, if any, in performing the Audit, and the measures taken to address such problems or difficulties at each Facility; and

g. documentation demonstrating the Auditor's utilization of the EPA Audit Protocols and the Maryland Part 70 Operating Permit Initial Application used in the Audit during the quarter being reported (Appendix D) executed by the Auditor and certified as true and accurate by the Auditor.

21. The Final Audit Report shall contain the following additional information:

a. A detailed description of the Audit as implemented describing how the Audit has fulfilled all of the requirements described herein;

b. A description of any operating problems encountered by the Auditor and the solutions provided by MTA to address such problems; and

c. A certification by the Auditor that the Audit has been fully completed in accordance with the relevant provisions of this SCD, and

d. A description of the environmental and public health benefits resulting from the implementation of the Audit.

B. REPORTING AREAS OF NONCOMPLIANCE, REMEDIATION PLANS, REQUESTS FOR ADDITIONAL TIME

22. MTA shall, for any environmental AON which cannot be corrected within sixty (60) days, submit a written request, as soon as practicable, to EPA for additional time to correct the AON, specifying the amount of additional time requested to correct the AON and an explanation why the AON cannot be corrected within sixty (60) days.

C. EPA REVIEW OF AUDIT ACTIVITIES

23. Upon completion of a review by EPA of each Quarterly Audit Report and the Final Audit Report, EPA shall, in its sole discretion, either (a) notify MTA in writing of EPA's acceptance of each Quarterly Audit Report and the Final Audit Report, or (b) notify MTA in writing EPA does not accept all or any part of such Quarterly Audit Report and the Final Audit Report. If EPA does not accept all or any part of MTA's proposed Quarterly Audit Report and/or the Final Audit Report, EPA shall state the reasons for such non-acceptance in writing. MTA will make a new submission within thirty (30) days of receipt of EPA's written response. In the event that MTA fails to revise and re-submit any or all of the items addressed in EPA's notice of non-acceptance for either a Quarterly Audit Report or the Final Audit Report within the deadline provided by EPA in such notice, EPA shall have the right to investigate any and all of MTA's facilities that were not properly addressed in such Quarterly Audit Report and/or the Final Audit Report and to seek and collect the maximum civil penalty allowed by law for any and all AONs at any such facility.

24. For each report and remediation plan that is submitted by MTA under Section III of the SCD, EPA shall:

a. notify MTA in writing that it has accepted its report and remediation plan; or

b. notify MTA in writing that EPA is not accepting the report and remediation plan; MTA will submit a new report and remediation plan within thirty (30) days.

D. RECORD RETENTION

25. MTA shall maintain legible copies for inspection and/or a request for documentation by EPA of the following:

a. any and all underlying research and data provided to the Auditor that formed the basis of the determination for each Quarterly Audit Report for a period of three (3) years from the date of submission to EPA of the Final Audit Report;

b. each EPA inspection Checklist and/or Audit Protocol, as applicable, for a period of three (3) years from the date of submission to EPA of the Final Audit Report; and

c. the original records pertaining to the actual implementation and/or performance of the Audit for a period of three (3) years from the date of acceptance of the Final Audit Report pursuant to paragraph 23.

26. MTA shall provide the documentation of any of the above upon a request by EPA within fifteen (15) calendar days of receipt of a written request for such information by EPA. MTA shall provide the documentation of any of the above as part of an EPA inspection pursuant to paragraph 12 of the CAFO.

E. NOTIFICATION OF CONTACTS

27. Except as otherwise specified herein, whenever this SCD requires notice or submission of reports, information, or documents, such notice or submission shall be provided to the person identified in paragraph 37 of the CAFO.

IV. DELAY IN PERFORMANCE/FAILURE TO COMPLETE SATISFACTORILY THE QUARTERLY AUDIT REPORTS OR FINAL AUDIT REPORT

28. In exercising its discretion or making determinations under this SCD, EPA shall be reasonable in considering all of the relevant circumstances. However, all determinations required to be made by EPA under this SCD, including the determination of whether each report has been completed satisfactorily, shall be in the sole discretion of EPA. EPA shall be under no obligation to review and/or approve any Quarterly Audit Report and/or the Final Audit Report that is not submitted or revised by MTA within the deadline established for such submission or revision in this SCD, or pursuant to Section V of this SCD.

29. Any AON of the regulations listed in paragraph 5 of this SCD discovered and not corrected, or discovered but not disclosed pursuant to the Audit, in an approved Quarterly Audit Report or the Final Audit Report, shall not qualify for the audit penalties set forth in Section VII of this SCD and EPA shall have the right to seek and collect the maximum civil penalty allowed by law for such AON. Notwithstanding any other provisions of this SCD, no action or decision by EPA pursuant to this SCD shall constitute final agency action giving rise to any right to judicial review prior to EPA's initiation of judicial action to compel compliance with this SCD, the Consent Agreement or the Final Order.

V. FORCE MAJEURE

30. If any event occurs which causes or may cause delays in the completion of the tasks required under this SCD, MTA shall notify EPA in writing within 10 days of such event or

within 10 days of MTA's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by MTA to prevent or minimize the delay, and the timetable by which those measures will be implemented. MTA shall implement all reasonable and feasible measures to avoid or minimize any such delay. Failure by MTA to comply with the notice requirements of this Section shall render this Section void and of no effect as to the particular incident involved and constitute a waiver of the MTA's right to request an extension of its obligation under this SCD based on such incident.

31. If the parties agree that the delay or anticipated delay in complying with this SCD has been or will be caused by circumstances entirely beyond the control of MTA which could not or cannot be overcome by due diligence, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate in writing to such extension of time.

32. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this SCD has been or will be caused by force majeure, EPA, in its sole discretion, will notify MTA in writing of its decision. Such delays shall not be the basis for any extension of time for the performance of MTA's obligations under this SCD.

33. The burden of proving that any delay is caused by force majeure shall rest with MTA. Increased costs or expenses associated with the implementation of actions required by this SCD shall not, in any event, be a basis for changes in this SCD or extensions of time, hereunder.

VI. MTA'S RIGHT OF APPEAL

34. Before EPA invokes any of its rights under paragraphs 13 and 23 of this SCD, including without limitation, its right to terminate this SCD, MTA shall have the right to seek a written

appeal to the EPA Deputy Regional Administrator for Region III. The written appeal shall state the basis for MTA's appeal. The written appeal shall operate as a stay of any matters under appeal under this paragraph until the EPA Deputy Regional Administrator makes a final ruling, in writing, on MTA's appeal. Nothing in this paragraph limits the rights of EPA under paragraph 38 of this SCD.

35. The DRA will make every effort to render a decision within forty (40) days of Respondent's service of the appeal. The decision of the DRA shall be final and binding on the parties.

VII. AUDIT CIVIL PENALTIES FOR DISCOVERED, DISCLOSED AND CORRECTED AONs UNDER THE MULTI-FACILITY, MULTI-MEDIA COMPLIANCE AUDIT

36. In the event an AON is discovered by the Auditor at any of MTA's facilities, MTA shall be subject to Audit Penalties in accordance with paragraph 37 for each discovered, disclosed and corrected AON. Each discovered, disclosed and corrected AON shall be resolved and settled by paying the assessed Audit Penalty in accordance with paragraph 37.

37. Upon EPA's acceptance of the Final Audit Report pursuant to this SCD, EPA shall furnish to MTA a proposed CAFO representing an agreement in principle between the parties, and prepared in accordance with 40 C.F.R. Part 22 to resolve any claims for civil penalties EPA may have against MTA for any violation of the regulations listed in paragraph 5 of this SCD discovered and corrected pursuant to the Audit and disclosed in such approved Quarterly Audit Report and/or Final Audit Report. For violations disclosed under the Quarterly Audit Reports and/or Final Audit Report, MTA agrees to pay a civil penalty, as calculated under the applicable penalty policies, not to exceed a total of $250,000 as the assessed Audit Penalty, and perform

one or more Supplemental Environmental Projects (SEPs) for which MTA agrees to expend at least $800,000. MTA shall have thirty (30) days from receipt of such proposed CAFO, unless such time period is extended by written mutual consent by the parties, within which to obtain a letter from the Secretary of MDOT, indicating the Secretary's support of the settlement. This settlement is subject to the approval of the Maryland Board of Public Works and the Office of the Attorney General of the State of Maryland. MTA will make all reasonable efforts to obtain the necessary approvals to finalize this settlement. After signature by EPA, the fully executed CAFO shall be filed with the Regional Hearing Clerk in accordance with the Consolidated Rules of Practice. Nothing herein shall bar EPA from bringing an action in any appropriate forum seeking appropriate relief for any violation not discovered, disclosed and corrected by MTA pursuant to the terms of this SCD.

38. In the event that MTA fails, refuses, or does not obtain the necessary approvals to enter into such proposed CAFO with respect to any violation discovered and corrected pursuant to the Audit and disclosed in an approved Quarterly Audit Report and/or the Final Audit Report which is the subject of such CAFO, EPA shall have the right to commence an appropriate enforcement action for such violations, seek and collect the maximum civil penalty allowable by law for such violation without regard to the audit penalties in paragraph 37. MTA retains any defenses to any such action by EPA.

39. No criminal violation, and no civil violation that results in serious actual harm, or that may present an imminent and substantial endangerment to public health or the environment, shall qualify for the imposition of audit penalties and satisfaction under this SCD, or under the attached CAFO. EPA reserves the right to seek and obtain injunctive relief and the imposition of the maximum civil penalty or criminal sanction allowed by law for any such violation.

VIII. TOLLING OF THE STATUTE OF LIMITATIONS

40. MTA agrees to submit to EPA a proposed tolling agreement at the time that the parties enter into good faith negotiations for the CAFO that is contemplated by this SCD. The CAFO will cover the AON's identified by the Audits required by Section II(D) of this SCD. The proposed tolling agreement will toll the statute of limitations on AON's from the time that MTA submits the Final Audit Report to EPA (pursuant to paragraph 18), until either: (1) the date that the parties execute the CAFO that is contemplated by this SCD; or (2) the date that either party gives written notice that no agreement on a CAFO can be reached. The tolling agreement shall be in the form provided in Appendix E.

IX. CLAIM OF CONFIDENTIALITY

41. Pursuant to 40 C.F.R. § 2.203, MTA may submit a claim of confidentiality for any document or information submitted under this SCD. Failure to make a confidentiality claim at the time the document is submitted shall constitute a waiver of such claim. MTA shall not assert a claim of confidentiality with respect to any sampling, monitoring or analytical data.

MarieJR Owens/R3/USEPA/US
Sent by: Mariejr Owens

07/05/2006 11:54 AM

To Joyce Howell/R3/USEPA/US@EPA, Paul Dressel/R3/USEPA/US@EPA, Luke Wolfgang/R3/USEPA/US@EPA, Garth
cc Carol Amend/R3/USEPA/US@EPA
bcc

Subject Comments

JUNE 30, 2006 CONSENT AGREEMENT FINAL ORDER

Paragraph #20 This paragraph must remain in CAFO until MTA submits a certification stating that the work has already been completed.

Paragraph #53 delete the following from this paragraph ". . ."other than those alleged in the amended administrative complaint as discussed in paragraph 55 of this CAFO."

Paragraph #58 Should we add language which explains the "what if" the MD Board of Public Works does not approve the CAFO??

JUNE 30, 2006 SETTLEMENT CONDITIONS DOCUMENT

Paragraph #7 MTA stated during our meeting that they intended to make the audits start every three months, the dates listed in this paragraph do not reflect every three months -- revise dates as necessary

At the end of the paragraph revise final sentence to read "Respondents may change order of the facilities that are being audited, pending any pre-audit findings by the auditor with notice to EPA."

Paragraph #11 Reinsert the following sentence: " . . .and (4) will not perform any Audit activities with regard to prior work performed for Respondent."

Paragraph #12 The changes in this paragraph will significantly delay the start of the audit process. I believe the process EPA originally laid out anticipated identification of the Auditor and finalization of the contract within 90 days of the SCD (90 days would realistically would be the end of October). By building EPA into their own procurement process, it slows down the process and delays the start of the audits until February 2007. I had hoped the audits would start before the end of this calendar year.

Paragraph #13 Revise paragraph to read " The Audit Plan shall also provide for the completion of the Audit and submission to EPA of Quarterly Audit Reports beginning with the submittal of the first quarterly audit report on October 15, 2006. Each subsequent Quarterly Report shall be submitted on the 15th day of the third month (i.e., October 15, 2006, January 15, 2006, April 15, 2006, July 15, 2006, etc.). The Final Audit Report shall be submitted to EPA no later than sixty months after the date of this Settlement Conditions Document."

Paragraph #15 Not sure EPA wants to "approve" the selection of the Auditor and the Audit Statement of Work???

Paragraph #26 (this is the old paragraph #18) Reinsert the following text "Upon discovery of any environmental violation during the course of performing the Audit that is required by the SCD, Respondent shall submit to

EPA (1) report of such violation; (2) a plan for the remediation of the violation within 30 days of the discovery."

Paragraph #27 (this is the old paragraph #19) Reinsert the following text at the end of the paragraph "For each report and remediation plan that is submitted by Respondent under paragraph 16 of the SCD, EPA shall (1) notify Respondent in writing that it has accepted its report and remdiation plan; or (2) notify Respondent in writing that EPA is rejecting the report and remediation plan, and shall provide Respondent in writing a reasonable time in which to submit a new report and remediation plan."

Paragraph #35 This entire paragraph appears to be attempting to limit EPA's enforcement authorities. This entire paragraph should be removed.

Paragraph #39 Revise paragraph to read ". . . Such Consent agreement shall require Respondent to pay, for each such violation, ~~a penalty that will be negotiated by the parties~~ 25% of the gravity as calculated under the applicable penalty policy, plus an amount equal to the economic benefit, if any recognized by the Respondent as a result of such violation (audit penalty)."
Also reinsert the following sentence "Nothing herein shall bar EPA from bringing an action in any appropriate forum seeking appropriate relief for any violation not discovered, disclosed and corrected by Respondent pursuant to the terms of this SCD."

Paragraph #40 Remove reference to the appeal process from Section VII and reinsert the following ". . . seek and collect the maximum civil penalty allowable by law for such violation without regard to the audit penalties in paragraph 31."

Paragraph #41 Reinsert this paragraph in total

If you have any questions or need additional information please let me know.

Marie Owens
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