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

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

Re: IMO State of Maryland, Maryland Department of Transportation, Maryland Transit Administration
EPA Docket No. CWA-03-2006-0019 and EPA Docket No. RCRA-03-2006-0019

Dear Secretary Flanagan:

Thank you for your letter of November 15. The Maryland Attorney General has requested certain changes to the agreement reached between us in settlement of the above-captioned matter. It is disappointing that at this juncture changes have been requested, and moreover, that this request is accompanied by the statement that our agreement will be terminated if USEPA does not agree to the proposed changes. In anticipation of your telephone call to me, I am setting forth USEPA's position on the requested changes.

Paragraph 13 of the CAFO and Paragraph 41 of the SCD.

> Pursuant to 40 C.F.R. § 2.203, MTA 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 *consistent with Maryland Law.* Maryland shall not assert a claim of confidentiality with respect to any sampling, monitoring or analytical data.
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> 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 *consistent with Maryland Law.* Maryland shall not assert a claim of confidentiality with respect to any sampling, monitoring or analytical data.

USEPA cannot accept this proposed change. USEPA is not bound by Maryland law, however the proposed change to these paragraphs would bind USEPA to Maryland law. As originally written this paragraph simply reiterated the operation of the cited regulatory section, which explains that absent a claim of confidentiality with a submission under the CAFO or SCD, USEPA is not bound to maintain the confidentiality of the submission.

Paragraph 63 of the CAFO:

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 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.~~ *It is EPA's position that the failure to obtain appropriations does not excuse MTA's obligation as provided in paragraph 58 of the CAFO.* The approval of the Maryland Board of Public Works is indicated in Appendix C to this CAFO.

Although you have characterized this proposed change as non-substantive, the new language eviscerates the entire substance of the agreement since it would excuse MTA from performance of the SEP, the SCD, of the CAFO's specific injunctive relief, and payment of the penalty should MTA be unable to perform on the basis of failure to obtain of appropriations. USEPA cannot accept this change.

Paragraph 22 of the SCD:

~~*In addition to paragraph 30*~~ MTA shall, for any environmental AON which ***is not subject to paragraph 30 and*** cannot be corrected within (60) days, submit a written request, as soon as practicable, to USEPA for additional time to correct the AON, specifying the amount of additional time requested to correct the AON ans and explanation of why the AON cannot be corrected in sixty (60) days.

The concept of the proposed change is acceptable, however, as noted above in the bold italic print, USEPA suggests alternative language to that proposed by the Maryland Attorney General.

If the Maryland Attorney General wishes to discuss this matter, we would be glad to convene a telephone conference of the relevant staff members to discuss the proposed changes and USEPA's response to the same. If a teleconference is desired, pleas ask you staff to contact Joyce Howell of my staff at 215-814-2644. Thank you.

Sincerely,

William T. Wisnieski
Deputy Regional Administrator