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

IN RE:	
STATE OF MARYLAND, MARYLAND DEPARTMENT OF TRANSPORTATION, MARYLAND TRANSIT ADMINISTRATION, Respondent.	CONSENT AGREEMENT
	DOCKET No. RCRA-CWA-CAA-03-2012-0038
Facility Addresses:	
Kirk Bus Division 226 Kirk Avenue Baltimore, MD 21217	
Eastern Bus Division 201 Oldham Avenue Baltimore, MD 21224	
Northwest Bus Division 4401 Mount Hope Drive Baltimore, MD 21215	
North Ave. Light Rail Maintenance 344 West North Avenue Baltimore, MD 21217	
Cromwell Light Rail Maintenance 7390 Baltimore-Annapolis Road Glen Burnie, MD 21061	
Old Court Metro Maintenance 4380 Old Court Road Pikesville, MD 21208	
MARC Frederick 7900 Reich Ford Road Frederick, MD 21704	

MARC Martin
2700 Eastern Boulevard
Middle River, MD 21220

Marc Brunswick
100 South Maple Avenue
Brunswick, MD 21716

MTA Transit Administration
Federalsburg Facility
106 Railroad Avenue
Federalsburg, MD 21632

I. STATUTORY AUTHORITY

1. 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, Section 113 of the Clean Air Act ("CAA") 42 U.S.C. § 7413, and in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* ("Consolidated Rules"), 40 C.F.R. Part 22, including, specifically 40 C.F.R. §§ 22.13(b) and .18(b)(2) and (3).

2. Pursuant to Section 22.13(b) of the Consolidated Rules of Practice, this CAFO simultaneously commences and concludes an administrative proceeding against Respondent, brought under Sections 301(a) and 311(b)(3) of the CWA, 33 U.S.C. §§ 1311(a) and 1321(b)(3); Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g); Section 9006 of RCRA, 42 U.S.C. § 6991e and Section 113(d) of the CAA, 42 U.S.C. § 7413(d), to resolve alleged violations at Respondent's Facilities listed in Section III of this CAFO.

3. Pursuant to Section 309(g)(b) of the CWA 33 U.S,C. § 1319(g)(b), the Administrator of EPA is authorized to assess administrative penalties against any person who violates any National Pollutant Discharge Elimination System ("NPDES") Permit condition. This authority to has been delegated by the Administrator of EPA to the Regional Administrator of EPA, Region

III, and further delegated to Director of the Office of Enforcement, Compliance and Environmental Justice, U.S. EPA - Region III.

4. Section 113(a)(3) and (d) of the CAA, 42 U.S.C. §§ 7413(a)(3) and (d), authorizes the Administrator of EPA to issue an administrative order assessing a civil administrative penalty whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any requirement, rule, plan, order, waiver, or permit promulgated, issued, or approved under Subchapters I, IV, V and VI [also referred to as Titles I, IV, V and VI] of the CAA. This authority has been delegated by the Administrator of EPA to the Regional Administrator of EPA, Region III, and further delegated to Director of the Office of Enforcement, Compliance and Environmental Justice, U.S. EPA - Region III.

5. Pursuant to Section 311(b)(6) of the CWA, as amended by the Oil Pollution Act of 1990, 33 U.S.C. § 1321(b)(6) the Administrator of EPA is authorized to assess administrative penalties against any owner, operator or person in charge of any vessel, onshore facility or offshore facility who fails to comply with any regulation issued under Section 311(j), 33 U.S.C. § 1321(j) to which that owner, operator or person in charge is subject. This authority has been delegated by the Administrator of EPA to the Regional Administrator of EPA, Region III, and further delegated to Director of the Office of Enforcement, Compliance and Environmental Justice, U.S. EPA - Region III.

6. This CAFO addresses, *inter alia*, alleged violations by Respondent of RCRA Subtitle C and the State of Maryland Hazardous Waste Management Regulations ("MdHWMR"), set forth at the Code of Maryland Regulations ("COMAR"), Title 26, Subtitle 13, et seq. The MdHWMR were originally authorized by EPA on February 11, 1985, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b). Revisions to the Maryland hazardous waste management program set forth at COMAR, Title 26, Subtitle 13 were authorized by EPA effective July 31, 2001 and September 24, 2004. The provisions of the revised authorized program are enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

7. This CAFO addresses, *inter alia*, alleged violations by Respondent of RCRA Subtitle I and the State of Maryland Underground Storage Tank Management Program. Effective July 30, 1992, pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991*c*, and 40 C.F.R. Part 281, Subpart A, the State of Maryland was granted final authorization to administer a state underground storage tank management program *in lieu* of the Federal underground storage tank management program established under Subtitle I of RCRA, 42 U.S.C. §§ 6991-6991*m*. The provisions of the Maryland Underground Storage Tank Management Program through this final authorization have become requirements of Subtitle I of RCRA and are, accordingly, enforceable by EPA pursuant to Section 9006 of RCRA, 42 U.S.C. § 6991*e*.

8. Maryland's authorized Hazardous Waste Management Program and Underground Storage Tank Management Program regulations are administered by the Maryland Department of the Environment ("MDE"), and are set forth in the Code of Maryland Regulations and will be cited as "COMAR" followed by the applicable section of the regulations.

II. PRELIMINARY STATEMENTS

9. On December 7, 2005, Complainant issued an Administrative Complaint and Notice of Opportunity for Hearing, Docket Numbers CWA-03-2006-0019 and RCRA-03-2006-0019. On January 4, 2006, Complainant subsequently issued an Amended Complaint. 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").

10. On January 9, 2007, the Regional Judicial Office entered a Final Order ratifying a Consent Agreement settling the allegations contained in the Administrative Complaint described in Paragraph 9. The Consent Agreement and Final Order became effective on February 7, 2007.

11. On June 8, 2007, PEER Consultants, P.C. received a Notice to Proceed from Respondent and began to conduct multi-media compliance audits ("CEAs") of the Facilities set forth in Section III pursuant to a Multi-Facility, Multi-Media Compliance Audit which Respondent agreed to perform as part of the settlement set forth in the Consent Agreement, Final Order and Settlement Conditions Document, *In the Matter of Maryland Transit Administration*, Docket Numbers CWA-03-2006-0019 and RCRA-03-2006-0019 dated January 9, 2007.

12. Pursuant to the Consent Agreement, Final Order and Settlement Conditions Document, *In the Matter of Maryland Transit Administration*, Docket Numbers CWA-03-2006-0019 and RCRA-03-2006-0019 dated January 9, 2007, Respondent performed an audit of the MTA Washington Boulevard Complex, 1515 Washington Boulevard Baltimore, Maryland, 21230 for violations of the Toxic Chemical Release Reporting ("TSCA"), 40 C.F.R. Parts745, 761 and 763,Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), Emergency Planning and Community Right to Know Act ("EPCRA"), 40 C.F.R. Parts 302, 355, 370 and 372. No violations of TSCA, CERCLA and EPCRA regulations noted in this Paragraph were identified by the audit of the Washington Boulevard Complex by PEER Consultants, P.C.

13. EPA published notice of the commencement of this 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.

14. Respondent neither admits nor denies the specific factual allegations and legal conclusions contained in the Consent Agreement. For purposes of this CAFO, Respondent admits to the jurisdictional allegations set forth in this CAFO. Respondent expressly reserves its right to contest the jurisdictional arguments under the CAA, RCRA or the CWA in any other enforcement proceeding commenced against Respondent by EPA.

15. 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.

16. For purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing under Section 113(a)(1) and (3) of the CAA, 42 U.S.C. § 7413 (a)(1) and (3), 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), and waives its right to appeal the Final Order.

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

18. Each party to this CAFO shall pay its own costs and attorney's fees associated with this CAFO having docket number RCRA-CWA-CAA-03-2012-0038.

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

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

20. Respondent is a person within the meaning of:

A. Section 502(5) of the CWA, 33 U.S.C. §1362(5) and Section 311(a)(7) of the CWA, 33 U.S.C. §1321(a)(7), and 40 C.F.R. §112.2;

B. Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 40 C.F.R. § 260.10, "COMAR" 26.13.01.03.B (61); and Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), 40 C.F.R.§ 280.12, and COMAR 26.10.02.04B(40); and

C. Section 113(a) of the CAA, 42 U.S.C. § 7413(a) and as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

21. Respondent is the "owner" and/or "operator" of the Facilities listed in Section III as those terms are defined at:

A. Sections 311(a)(6) and 502(5) of the CWA, 33 U.S.C. Sections 1321(a)(6) and 1362(5), and 40 C.F.R. §112.2;

B. COMAR 26.13.01.03.B (58) and (59) (40 C.F.R. § 260.10); and Section 9001(3) and (4) of RCRA, 42 U.S.C. § 6991(3) and (4), and COMAR 26.10.02.04B (37) and (39) and 40 C.F.R.§ 280.12.

22. Respondent is a "local government" owner of USTs within the meaning of COMAR 26. 10.11.01, which incorporates by reference 40 C.F.R. § 280.92 as amended through October 31, 1990.

23. At all times relevant to this CAFO, Respondent has been the "owner" and/or "operator", as those terms are defined in Section 9001(3) and (4) of RCRA, 42 U.S.C. 6991(3) and (4), and COMAR 26.10.02.04B (37) and (39), of the "underground storage tanks" ("USTs") and "UST systems" as those terms are defined in Section 9001(10) of RCRA, 42 U.S.C. § 6991(10), and COMAR 26.10.02.04B(64) and (66), located at the facilities listed in below: ("Facilities").

Kirk Bus Division
226 Kirk Avenue
Baltimore, MD 21217

Eastern Bus Division
201 Oldham Avenue
Baltimore, MD 21224

Northwest Bus Division
4401 Mount Hope Drive
Baltimore, MD 21215

North Avenue Light Rail Maintenance
344 West North Avenue
Baltimore, MD 21217

Cromwell Light Rail Maintenance
7390 Baltimore-Annapolis Road
Glen Burnie, MD 21061

Old Court Metro Maintenance
4380 Old Court Road
Pikesville, MD 21208

MARC Frederick
7900 Reich Ford Road
Frederick, MD 21704

MARC Martin
2700 Eastern Boulevard
Middle River, MD 21220

MARC Brunswick
100 South Maple Avenue
Brunswick, MD 21716

MTA Transit Administration
Federalsburg Facility
106 Railroad Avenue
Federalsburg, MD 21632

24. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into navigable waters of the United States except in compliance with, *inter alia*, permits issued pursuant to the National Pollutant Discharge Elimination System (NPDES) program under Section 402 of the CWA, 33 U.S.C. § 1342.

25. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.1 and 122.26 provide that facilities that have "storm water discharges associated with industrial activity" are

"point sources" subject to NPDES permitting requirements under Section 402(a) of the CWA, 33 U.S.C.§ 1342(a).

26. Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1), provides that the President shall issue regulations, *inter alia*, "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from vessels and from onshore and offshore facilities, and to contain such discharges . . . ".

27. EPA promulgated Oil Pollution Prevention Regulations, 40 C.F.R. Part 112, 38 Fed. Reg. 34165 (Dec. 11, 1973), effective January 10, 1974. These regulations were last codified at 40 C.F.R. Part 112 (2002) (hereinafter, the "1974 Regulations").

28. The 1974 Regulations were revised in part in 2002, 67 Fed. Reg. 47042 (July 17, 2002) (2002 Regulations), which became effective August 16, 2002, and again in 2006, 71 Fed. Reg. 77266 (Dec. 26, 2006) (2006 Regulations), which became effective February 26, 2007.

29. As set forth at 74 Fed. Reg. 29136, the date(s) by which facilities that become operational after August 16, 2002 must comply with the 2002 Regulations and the 2006 Regulations as presently codified currently is November 10, 2010.

30. Pursuant to 40 C.F.R. § 112.3(a)(1) (2006), facilities in operation prior to August, 16, 2002 are required to maintain their Spill Prevention, Control and Countermeasure ("SPCC") plans as required by the 1974 Regulations. Accordingly, for purposes of this CAFO, unless otherwise noted, regulatory requirements cited herein refer to the 1974 Regulations.

31. 40 C.F.R. Part 112 sets forth procedures, methods and requirements to prevent the discharge of oil from Part 112 Facilities into or upon the navigable waters of the United States and adjoining shorelines in such quantities that, as determined by regulation, may be harmful to the public health or welfare or to the environment.

32. The 1974 Regulations, 40 C.F.R. Part 112, which implement Section 311(j) of the CWA, 33 U.S.C. § 1321(j), apply to owners or operators of non-transportation-related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products ("Part 112 Facilities").

33. 40 C.F.R. §112.3(a) requires owners and operators of onshore and offshore facilities becoming operational on or before the effective date of the regulations (January 10, 1974), that could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, to prepare SPCC Plans not later than July 10, 1974, and to implement those plans as soon as possible but not later than January 10, 1975. In addition, 40 C.F.R. §112.3(b) requires owners and operators of onshore and offshore facilities becoming operational after the effective date of the regulations (January 10, 1974), that could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, to prepare SPCC Plans not later than six months after the facilities become operational.

34. "Oil" is defined in Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2 to include any kind of oil in any form, including petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredged spoil.

35. 40 C.F.R. §110.3(b) defines "harmful quantity" for purposes of Section 311 of the CWA, 33 U.S.C. § 1321, to include discharges that "cause a film or sheen upon . . . the surface of the water or adjoining shorelines."

36. Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2) defines "discharge" to include any spilling, leaking, pumping, pouring, emitting, or dumping other than federally permitted discharges pursuant to a permit under 33 U.S.C. § 1342.

37. For purposes of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), "navigable water" is defined by 40 C.F.R. §§ 110.1 and 112.2 to include, among other things, tributaries to waters that could be used for industrial purposes or interstate commerce.

Notice of Action to the State of Maryland

38. EPA has given the State of Maryland, through the Maryland Department of the Environment ("MDE"), prior notice of the initiation of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2) and Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991*e*(a)(2). Notice of this action has also been provided to MDE pursuant to 40 C.F.R. § 22.38.

COUNT I. KIRK BUS DISIVISION

(Stormwater)

39. The preceding Paragraphs are re-alleged and incorporated by reference.

40. Pursuant to Sections 402(a) and 402(p) of the Clean Water Act, 33 U.S.C. §§ 1342(a) and (p), MDE issued the General Maryland Pollutant Discharge Elimination System Permit for Discharges of Storm Water from Industrial Activity (hereinafter, "MD NPDES General Permit"), COMAR 26.08.04.09 B.

41. The MD NPDES General Permit authorizes the discharge of storm water associated with industrial activity to waters of the United States (including discharges to or through municipal separate storm sewer systems), but only in accordance with the conditions of the permit.

42. Part II of the MD NPDES General Permit requires pemittees to develop and implement storm water pollution prevention plans ("SWPPP") for the industrial activity covered by the permit.

43. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge

Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342 and 40 C.F.R. Part 122.

44. Section 402(p)(2)(B) of the Act, 33 U.S.C. § 1342(p)(2)(B), and 40 C.F.R. §§122.1 and 122.26 provide that facilities that have "storm water discharges associated with industrial activity" are "point sources" subject to the prohibition on discharge of pollutants under Section 301 of the Act, 33 U.S.C. §1321, and the NPDES permitting requirements under Section 402 of the Act, 33 U.S.C. § 1342.

45. On December 4, 2007, PEER Consultants conducted a CEA of the Kirk Bus Division Facility pursuant to a Multi-Facility Compliance Audit which Respondent agreed to perform as part of the settlement set forth in the Consent Agreement, Final Order and Settlement Conditions Document dated January 9, 2007, Docket Numbers CWA-03-2006-19 and RCRA-03-2006-0019.

46. At the time of the December 4, 2007 CEA, and at all times relevant hereto, the Kirk Bus Division Facility was a "point source" which "discharged" "pollutants" contained in storm water runoff as those terms are defined at Sections 502(6), (14) and (16) of the Clean Water Act, 33 U.S.C. §§ 1362(6), (14) and (16), and 40 C.F.R. § 122.2.

47. Respondent was issued a General Permit for Storm Water Discharges Associated with Industrial Activity for the Kirk Bus Division Facility by the State of Maryland having permit number 02-SW-1676.

48. Permit number 02-SW-1676 contains certain terms and conditions *inter alia*, the requirement that Respondent implement a SWPPP, and conduct monthly site inspections, at its Kirk Bus Division Facility.

49. At the time of the CEA, until October 1, 2008, Respondent's SWPPP was not in compliance with the terms of its MD General Permit because Respondent had failed to develop an inspection checklist and conduct monthly inspections in accordance with the SWPP and as required by the MD General Permit 02-SW-1676.

50. Respondent's failure to implement the requirements of permit number 02-SW-1676 constitutes a violation of Section 402 of the CWA, 33 U.S.C. § 1342.

COUNT II. KIRK BUS DISIVISION

(SPCC)

51. The preceding Paragraphs are re-alleged and incorporated by reference.

52. Pursuant to 40 C.F.R. § 112.3(a), owners or operators of onshore facilities that became operational before August 16, 2002, and that could reasonably be expected to discharge oil in harmful quantities, as described in 40 C.F.R. Part 110, into or upon the navigable waters of the United States or adjoining shorelines, shall prepare a Spill Prevention Control and Countermeasure ("SPCC") Plan and maintain and amend such Plan as necessary.

53. Respondent's Kirk Bus Division Facility has the capacity to store greater than 42,000 gallons of oil but less than 200,000 gallons of oil.

54. Respondent's Kirk Bus Division Facility was in operation as an onshore facility within the meaning of 40 C.F.R. Part 112 before August 16, 2002.

55. Respondent's Kirk Bus Division Facility has oil storage tanks in close proximity to municipal storm drains which discharge to the Chesapeake Bay.

56. From December 7, 2004 until July 3, 2008, Respondent did not include a heating oil above ground storage tank ("AST") and a petroleum drum storage area in the inspection list contained in the Kirk Bus Division Facility SPCC Plan, in violation of 40 C.F.R. § 112.3(a) and 40 C.F.R. § 112.7(e).

57. From December 7, 2004 until July 3, 2008, Respondent did not maintain records of inspections conducted pursuant to the Kirk Bus Division Facility SPCC Plan, in violation of 40 C.F.R. § 112.7(e).

58. From December 7, 2004 until April 17, 2009, Respondent did not provide an overfill protection device for an above ground storage tank used to store synthetic oil, in violation of 40 C.F.R. §112.8(8).

59. From December 7, 2004 until April 17, 2009, Respondent failed to provide adequate containment or a diversionary structure to prevent a discharge of oil from a petroleum storage drum filling operation, in violation of 40 C.F.R. § 112.7(c).

COUNT III. KIRK BUS DISIVISION

(Hazardous Waste)

60. The preceding Paragraphs are re-alleged and incorporated by reference.

61. COMAR 26.13.03.02A provides that a person who generates a solid waste as defined in COMAR 26.13.02.02 shall determine if that waste is a hazardous waste using the method set forth in COMAR 26.13.03.02.(1)-(3)..

62. At all times relevant to this CAFO, including, but not limited to, the time of the December 4, 2007 CEA and continuing through December 5, 2007, Respondent has generated at the Facility "solid waste," as that term is defined by COMAR 26.13.02.02, RCRA Section 1004(27), 42 U.S.C. § 6903(27), and 40 C.F.R. §§ 260.10, 261.2 and 261.3.

63. Respondent is and has been, since December 7, 2004 through the period of the violations alleged herein, a "generator" of, and has engaged in the "storage" of, materials that are "solid wastes" and "hazardous waste" at the Facility as those terms are defined by COMAR 26.13.01.03B and 40 C.F.R. § 260.10.

64. As a person who generates solid waste, Respondent was required, at all times relevant to this Complaint, by COMAR 26.13.03 and 40 C.F.R. § 262.11 to determine if the solid wastes it generated were hazardous wastes using the methods prescribed by COMAR 26.13.03.02 and 40 C.F.R. § 262.11(a) and (b).

65. From December 7, 2004 until December 5, 2007, Respondent treated, stored and/or disposed of a solid waste, *i.e.*, an ignitable liquid and thus exhibiting the hazardous waste characteristic of "ignitability" (D001), into a trash receptacle at the Kirk Bus Division Facility without first performing a hazardous waste determination on such solid waste in violation of COMAR 26.13.03.02 and 40 C.F.R. § 262.11.

COUNT IV. KIRK BUS DISIVISION

(Universal Waste)

66. The preceding Paragraphs are re-alleged and incorporated by reference.

67. Respondent's Kirk Bus Division Facility is a small quantity generator of universal waste as that term is defined in COMAR 26.13.01.03(72-2).

68. Small quantity generators of universal waste are required to provide the information listed in COMAR 26.13.10.17C to all employees who handle or have responsibility for handling or managing universal waste.

69. From December 7, 2004 until November 25, 2008, Respondent had not provided the information listed in COMAR 26.13.10.17C to all the employees at the Kirk Bus Division Facility who handle or have responsibility for handling or managing universal waste, in violation of COMAR 26.13.10.17C.

70. COMAR 26.13.10.17A(2)(e) requires small quantity generators to label and mark universal waste lamps, and universal waste lamp containers with either the words "Universal Waste-Lamps," "Waste Lamp(s)," or "Used Lamp(s)."

71. COMAR 26.13.10.15 requires small quantity generators to contain universal waste lamps in a container or package meeting the requirements of COMAR 26.13.10.15B(1).

72. From December 7, 2004 until November 28, 2008 Respondent did not label and mark universal waste lamps, and universal waste lamp containers, in violation of COMAR 26.13.10.17A (2)(e).

73. From December 7, 2004 until April 8, 2008 Respondent did not contain universal waste lamps in container or package meeting the requirements of COMAR 26.13.10.15B(1), in violation of COMAR 13.10.15.

COUNT V. EASTERN BUS DISIVISION

(Stormwater)

74. The preceding Paragraphs are re-alleged and incorporated by reference.

75. On December 5, 2007, PEER Consultants conducted a CEA of the Eastern Bus Division Facility pursuant to a Multi-Facility Compliance Audit which Respondent agreed to perform as part of the settlement set forth in the Consent Agreement, Final Order and Settlement Conditions Document dated January 9, 2007, Docket Numbers CWA-03-2006-19 and RCRA-03-2006-0019.

76. At the time of the December 5, 2007 CEA, and at all times relevant hereto, the Eastern Bus Division Facility was a "point source" which "discharged" "pollutants" contained in storm water runoff as those terms are defined at Sections 502(6), (14) and (16) of the Clean Water Act, 33 U.S.C. §§ 1362(6), (14) and (16), and 40 C.F.R. § 122.2.

77. Respondent was issued a General Permit for Storm Water Discharges Associated with Industrial Activity for the Eastern Bus Division Facility by the State of Maryland having permit number 02-SW-1674.

78. Permit number 02-SW-1674 contains certain terms and conditions, *inter alia*, the requirement that Respondent implement a SWPPP and conduct monthly site inspections as required by the SWPPP, at its Eastern Bus Division Facility.

79. From December 7, 2004 until October 15, 2008, Respondent's SWPPP was not in compliance with the terms of its MD General Permit at its Eastern Bus Division Facility because Respondent had failed to develop an inspection checklist as required by and conduct monthly inspections in accordance with the SWPPP and as required by the MD General Permit. 02-SW-1674.

80. Respondent's failure to implement the requirements of permit number 02-SW-1674 constitutes a violation of Section 402 of the CWA, 33 U.S.C. § 1342.

COUNT VI. EASTERN BUS DISIVISION

(SPCC)

81. The preceding Paragraphs are re-alleged and incorporated by reference.

82. Respondent's Eastern Bus Division Facility has the capacity to store greater than 42,000 gallons of oil but less than 200,000 gallons of oil.

83. Respondent's Eastern Bus Division Facility was in operation as an onshore facility within the meaning of 40 C.F.R. § 112.2 before August 16, 2002.

84. Respondent's Eastern Bus Division Facility has oil storage tanks in close proximity to municipal storm drains which discharge to the Chesapeake Bay.

85. From December 7, 2004 until July 3, 2008, Respondent did not include a heating oil underground storage tank ("UST") and an above-ground petroleum drum storage in the

inspection list contained in the Eastern Bus Division Facility SPCC Plan, in violation of 40 C.F.R. § 112.3(a) and 40 C.F.R. § 112.7(e).

86. From December 7, 2004 until July 3, 2008, Respondent did not maintain records of inspections conducted pursuant to the Eastern Bus Division Facility SPCC Plan, in violation of 40 C.F.R. § 112.7(e).

87. From December 7, 2004 until May 12, 2008, Respondent did not test liquid level operation devices, in violation of 40 C.F.R. § 112.8(8)(c)(8)(v).

COUNT VII. EASTERN BUS DISIVISION

(Hazardous Waste)

88. The preceding Paragraphs are re-alleged and incorporated by reference.

89. From December 7, 2004 and continuing through to January 28, 2008, Respondent has generated at the Eastern Bus Division Facility "solid waste," as that term is defined by COMAR 26.13.02.02, RCRA Section 1004(27), 42 U.S.C. § 6903(27), and 40 C.F.R. §§ 260.10, 261.2 and 261.3.

90. Respondent is and has been, since December 7, 2004 through the period of the violations alleged herein, a "generator" of, and has engaged in the "storage" of, materials that are "solid wastes" and "hazardous waste" at the Eastern Bus Division Facility as those terms are defined by COMAR 26.13.01.03B and 40 C.F.R. § 260.10.

91. From December 7, 2004 until January 28, 2008, Respondent treated, stored and/or disposed of a solid waste, i.e., spent sand/glass media, used antifreeze and solvent parts washers, into the waste disposal trash receptacle at the Eastern Bus Division Facility without first performing a hazardous waste determination on such solid waste in violation of COMAR 26.13.03.02 and 40 C.F.R. § 262.11.

COUNT VIII. EASTERN BUS DISIVISION

(Universal Waste)

92. The preceding Paragraphs are re-alleged and incorporated by reference.

93. Respondent's Eastern Bus Division Facility is a small quantity generator of universal waste as that term is defined in COMAR 26.13.01.03(72-2).

94. From December 7, 2004 until November 15, 2008, Respondent had not provided the information listed in COMAR 26.13.10.17C to all the employees at the Eastern Bus Division Facility who handle or have responsibility for handling or managing universal waste, in violation of COMAR 26.13.10.17C.

COUNT IX. NORTHWEST BUS DISIVISION

(SIP)

95. The preceding Paragraphs are re-alleged and incorporated by reference.

96. On January 22, 2008 PEER Consultants conducted a CEA of the Northwest Bus Division Facility pursuant to a Multi-Facility Compliance Audit which Respondent agreed to perform as part of the settlement set forth in the Consent Agreement, Final Order and Settlement Conditions Document dated January 9, 2007, Docket Numbers CWA-03-2006-19 and RCRA-03-2006-0019.

97. The Maryland SIP, approved by EPA at 40 C.F.R. § 52.1100, includes COMAR 26.11.24.02(F) which requires, with exceptions not relevant here, the installation of a vapor recovery system at all gasoline dispensing facilities where the throughput is greater than 10,000 gallons per month.

98. The Maryland SIP includes COMAR 26.11.24.06, which requires that facilities required to have vapor recovery systems must train employees involved in the operation and maintenance of the vapor recovery system.

99. From December 7, 2004 until January 18, 2008, Respondent had not trained its employees involved in the operation and maintenance of the vapor recovery system at the Northwest Bus Division Facility.

100. Respondent has been in violation of Section 113 of the Clean Air Act, 42 U.S.C. § 7413, and Maryland SIP including COMAR 26.11.24.02, *et seq*, from December 7, 2004 until January 18, 2008, because Respondent had not trained its employees responsible for and involved in the operation and maintenance of the vapor recovery system at the Northwest Bus Division Facility.

COUNT X. NORTHWEST BUS DISIVISION

(Stormwater)

101. The preceding Paragraphs are re-alleged and incorporated by reference.

102. At the time of the January 22, 2008 CEA, and at all times relevant hereto, the Northwest Bus Division Facility was a "point source" which "discharged" "pollutants" contained in storm water runoff as those terms are defined at Sections 502(6), (14) and (16) of the Clean Water Act, 33 U.S.C. §§ 1362(6), (14) and (16), and 40 C.F.R. § 122.2.

103. Respondent was issued a General Permit for Storm Water Discharges Associated with Industrial Activity for the Northwest Bus Division Facility by the State of Maryland having permit number 02-SW-1677.

104. Permit number 02-SW-1677 contains certain terms and conditions, *inter alia*, the requirement that Respondent implement a SWPPP and conduct monthly site inspections as required by the SWPPP, at its Northwest Bus Division Facility.

105. From December 7, 2004 until October 1, 2008, Respondent's SWPPP was not in compliance with the terms of its MD General Permit because Respondent had failed to develop an inspection checklist as required by the Facility SWPPP and conduct monthly inspections in accordance with the SWPPP and as required by the MD General Permit. 02-SW-1677.

106. Respondent's failure to implement the requirements of permit number 02-SW-1677 constitutes a violation of Section 402 of the CWA, 33 U.S.C. § 1342.

COUNT XI. NORTHWEST BUS DISIVISION

(SPCC)

107. The preceding Paragraphs are re-alleged and incorporated by reference.

108. Respondent's Northwest Bus Division Facility has the capacity to store greater than 42,000 gallons of oil but less than 200,000 gallons of oil.

109. Respondent's Northwest Bus Division Facility was in operation as an onshore facility within the meaning of 40 C.F.R. §112.2 before August 16, 2002.

110. Respondent's Northwest Bus Division Facility has oil storage tanks in close proximity to municipal storm drains which terminate at the Chesapeake Bay.

111. From December 7, 2004 until October 1, 2008, Respondent did not include a heating oil underground storage tank ("UST") and petroleum drum storage areas in the inspection list contained in the Northwest Bus Division Facility SPCC Plan, in violation of 40 C.F.R.§112.3(a) and 40 C.F.R. § 112.7(e).

112. From December 7, 2004 until October 1, 2008, Respondent did not maintain records of inspections conducted pursuant to the Northwest Bus Division Facility SPCC Plan, in violation of 40 C.F.R. § 112.7(e).

113. From December 7, 2004 until October 1, 2008, Respondent did not provide a high level alarm for its oil storage containers, in violation of 40 C.F.R. § 112.8(c)(8).

114. From December 7, 2004 until October 1, 2008, Respondent omitted elements which were required by 40 C.F.R. §112.8 to be included in the Northwest Facility SPCC Plan, in violation of 40 C.F.R. § 112.7(a)(3).

COUNT XII. NORTHWEST BUS DIVISION

(Hazardous Waste)

115. The preceding Paragraphs are re-alleged and incorporated by reference.

116. From December 7, 2004 and continuing through to March 3, 2008, Respondent has generated at the Northwest Bus Division Facility "solid waste," as that term is defined by

COMAR 26.13.02.02, RCRA Section 1004(27), 42 U.S.C. § 6903(27), and 40 C.F.R. §§ 260.10, 261.2 and 261.3.

117. Respondent is and has been, since December 7, 2004 through the period of the violations alleged herein, a "generator" of, and has engaged in the "storage" of, materials that are "solid wastes" and "hazardous waste" at the Northwest Bus Division Facility as those terms are defined by COMAR 26.13.01.03B and 40 C.F.R. § 260.10.

118. The Northwest Bus Division Facility is a "large quantity generator" of hazardous waste as that term is defined by COMAR 26.13.01.03B and 40 C.F.R. § 260.10.

119. From December 7, 2004 until March 3, 2008, Respondent treated, stored and/or disposed of a solid waste, *i.e.*, spent aerosol cans, waste oil, used oil filters, crushed lamps, and spent sand/glass, into the waste disposal trash receptacle at the Northwest Bus Division Facility without first performing a hazardous waste determination on such solid waste in violation of COMAR 26.13.03.02 and 40 C.F.R. § 262.11.

120. Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and COMAR 26.13.07.01A, provide, with certain exceptions not relevant to the violations alleged herein, that a person may not operate a hazardous waste storage, treatment or disposal facility unless such person has first obtained a permit for the facility.

121. RCRA §3005(e), 42 U.S.C. § 6925(c), provides, in pertinent part, that any person who owns or operates a facility required to have a permit under RCRA § 3005, which facility was in existence on November 19, 1980, or is in existence on the effective date of statutory or regulatory provisions that render the facility subject to the requirement to have a permit, has complied with the notification requirements of RCRA § 3010(a), 42 U.S.C. § 6930(a), and has applied for a permit under RCRA § 3005, shall be treated as having been issued such permit (*i.e.*, "interim status") until such time as final administrative disposition of such application is made.

122. Respondent has never had "interim status" pursuant to RCRA Section 3005(e) or a permit issued pursuant to RCRA Section 3005(a) for the treatment, storage, or disposal of hazardous waste at the Northwest Bus Division Facility.

123. Pursuant to COMAR 26.13.03.05E, generators of hazardous waste who accumulate hazardous waste on-site for less than 90 days are exempt from the requirement to obtain a permit for such accumulation, so long as the hazardous waste is stored in accordance with a number of conditions set forth in that section, including, *inter alia,* the requirements to comply with COMAR 26.13.05.04, which requires every generator have a Contingency Plan for its facility.

124. From February 13, 2006 until March 25, 2009, Respondent was not eligible for an exemption under COMAR 26.13.03.05E with respect to the on-site storage of the hazardous waste because it did not meet the conditions of that exemption; specifically, Respondent did not have a Contingency Plan.

125. From February 13, 2006 until March 25, 2009, Respondent did not meet the requirements for an exemption under COMAR 26.13.03.05E and therefore violated COMAR 26.13.07.01A and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), by operating a hazardous waste storage facility without a permit or interim status.

126. From February 13, 2006 until March 25, 2009, Respondent violated COMAR 26.13.05.04 and 40 C.F.R. § 264 Subpart D by failing to have a Contingency Plan for the Northwest Bus Division Facility.

COUNT XIII. NORTHWEST BUS DISIVISION

(Universal Waste)

127. The preceding Paragraphs are re-alleged and incorporated by reference.

128. Respondent's Northwest Bus Division Facility is a small quantity generator of universal waste as that term is defined in COMAR 26.13.01.03(72-2).

129. From December 7, 2004 until November 15, 2008, Respondent had not provided the information listed in COMAR 26.13.10.17C to all the employees at the Northwest Bus Division Facility who handle or have responsibility for handling or managing universal waste, in violation of COMAR 26.13.10.17C.

COUNT XIV. NORTHWEST BUS DISIVISION

(Underground Storage Tanks)

130. The preceding Paragraphs are re-alleged and incorporated by reference.

131. At the time of the January 22, 2008 CEA, and at all times relevant hereto, four (4) USTs, as described in the following subparagraphs, were located at the Northwest Bus Division Facility:

A. a 10,000 gallon USTs that was installed in or about January 1, 1985 and that, at all times relevant hereto, routinely contained gasoline, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and COMAR 26. 10.02.04B(48) ("Tank 1").

B. A 10,000 gallon UST that was installed in or about January 1, 1985 and that, at all times relevant hereto, routinely contained lube oil, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. §6991(7), and COMAR 26.10.02.04B(48) ("Tank 2").

C. A 10,000 gallon UST that was installed in or about January 1, 1985 and that, at all times relevant hereto, routinely contained transmission oil, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and COMAR 26.10.02.04B(48) ("Tank 3").

D. A 2,000 gallon UST that was installed in or about January 1, 1994 and that, at all times relevant hereto, routinely contained used oil, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and COMAR 26.10.02.04B(48) ("Tank 4").

132. From January 1, 1985 until the date of this CAFO, Tanks 1 – 3 at the Northwest Bus Division Facility have been "petroleum UST systems" and "existing tank systems" as these terms are defined in COMAR 26.10.02.04B(43) and (19), respectively.

133. From January 1, 1994 until the date of this CAFO, Tank 4 at the Northwest Bus Division Facility has been a "petroleum UST system" and a "new tank system" as these terms are defined in COMAR 26.10.02.04B(43) and (31), respectively.

134. USTs at the Northwest Bus Division Facility are and were, at all times relevant to this CAFO, used to store "regulated substance(s)" at Respondent's Northwest Bus Division Facility, as defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7) and COMAR 26.10. 02.04B(48).

135. COMAR 26.10.04.01A requires, in pertinent part, that owners and operators ensure that releases due to spilling and overfilling do not occur and adopts by reference American Petroleum Institute Publication 1621, which includes the requirement that overfill catchment basins be kept clean and dry to contain any spill that occurs during refueling of an UST.

136. From December 7, 2004 until March 24, 2008, Respondent did not keep the overfill catchment basin associated with Tank 1 clean and dry, in violation of COMAR 26.10.04.01A.

COUNT XV. NORTH AVENUE LIGHT RAIL MAINTENANCE FACILTIY

(CFCs)

137. The preceding Paragraphs are re-alleged and incorporated by reference.

138. On October 22, 2007 PEER Consultants conducted a multimedia CEA of the North Avenue Light Rail Maintenance Facility pursuant to a Multi-Facility Compliance Audit which Respondent agreed to perform as part of the settlement set forth in the Consent Agreement, Final Order and Settlement Conditions Document dated January 9, 2007, Docket Numbers CWA-03-2006-19 and RCRA-03-2006-0019.

139. Respondent owns and operates several "appliances" (*e.g.* any device which contains and uses a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer) within the meaning of 40 C.F.R. § 82.152 at the North Avenue Light Rail Maintenance Facility.

140. 40 C.F.R. §82.162(a) provides, with exceptions not applicable here, that persons maintaining, servicing, or repairing appliances and persons disposing of appliances except for small appliances must certify to the Administrator that such person has acquired certified

recovery or recycling equipment and is complying with the applicable requirements of 40 CF.R. Part 82, Subpart F, and that such certification be registered with the applicable EPA office as set forth in 40 C.F.R. § 82.162(a)(5).

141. From December 12, 2004 until October 19, 2007, Respondent had not registered the certification required by 40 C.F.R. § 82.162 for the recycling equipment at the North Avenue Light Rail Maintenance Facility with EPA, in violation of 40 C.F.R. §82.162(a)(5).

COUNT XVI. NORTH AVENUE LIGHT RAIL MAINTENANCE FACILTIY

(SPCC)

142. The preceding Paragraphs are re-alleged and incorporated by reference.

143. Respondent's North Avenue Light Rail Maintenance Facility has the capacity to store greater than 42,000 gallons of oil but less than 200,000 gallons of oil.

144. Respondent's North Avenue Light Rail Maintenance Facility was in operation as an onshore facility within the meaning of 40 C.F.R. Part 112 before August 16, 2002.

145. Respondent's North Avenue Light Rail Maintenance Facility has oil storage tanks in close proximity to municipal storm drains which discharge into the Chesapeake Bay.

146. From December 7, 2004 until October 22, 2007, Respondent did not inspect the aboveground storage tank for the emergency generator contained in the North Avenue Light Rail Maintenance Facility SPCC Plan, in violation of 40 C.F.R. § 112.3(a) and 40 C.F.R. § 112.7(e).

COUNT XVII. NORTH AVENUE LIGHT RAIL MAINTENANCE FACILTIY

(Hazardous Waste)

147. The preceding Paragraphs are re-alleged and incorporated by reference.

148. From December 7, 2004 and continuing through to October 22, 2007, Respondent has generated at the North Avenue Light Rail Maintenance Facility "solid waste," as that term is defined by COMAR 26.13.02.02, RCRA Section 1004(27), 42 U.S.C. § 6903(27), and 40 C.F.R. §§ 260.10, 261.2 and 261.3.

149. Respondent is and has been, since December 7, 2004 through the period of the violations alleged herein, a "generator" of, and has engaged in the "storage" of, materials that are "solid wastes" and "hazardous waste" at the North Avenue Light Rail Maintenance Facility as those terms are defined by COMAR 26.13.01.03B and 40 C.F.R. § 260.10.

150. The North Avenue Light Rail Maintenance Facility generates more than 1,000 of kilograms of of hazardous waste in a calendar month.

151. From December 7, 2004 until January 28, 2008, Respondent treated, stored and/or disposed of a solid waste, *i.e.*, cleaning solvent, spent bead blast media, paint booth filters, HVAC compressor oil and spent aerosol cans, waste oil and high pressure sodium lamps without first performing a hazardous waste determination on such solid waste in violation of COMAR 26.13.03.02 and 40 C.F.R. §262.11.

152. Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and COMAR 26.13.07.01A, provide, with certain exceptions not relevant to the violations alleged herein, that a person may not operate a hazardous waste storage, treatment or disposal facility unless such person has first obtained a permit for the facility.

153. RCRA §3005(e), 42 U.S.C. § 6925(e), provides, in pertinent part, that any person who owns or operates a facility required to have a permit under RCRA § 3005, which facility was in existence on November 19, 1980, or is in existence on the effective date of statutory or regulatory provisions that render the facility subject to the requirement to have a permit, has complied with the notification requirements of RCRA § 3010(a), 42 U.S.C. § 6930(a), and has applied for a permit under RCRA § 3005, shall be treated as having been issued such permit (*i.e*, "interim status") until such time as final administrative disposition of such application is made.

154. Respondent has never had "interim status" pursuant to RCRA Section 3005(e) or a permit issued pursuant to RCRA Section 3005(a) for the treatment, storage, or disposal of hazardous waste at the North Avenue Light Rail Maintenance Facility.

155. Pursuant to COMAR 26.13.03.05E, generators of hazardous waste who accumulate hazardous waste on-site for less than 90 days are exempt from the requirement to obtain a permit for such accumulation, so long as the hazardous waste is stored in accordance with a number of conditions set forth in that section, including, *inter alia,* the requirements to: 1) comply with COMAR 26.13.05.04, which requires every generator have a Contingency Plan for its facility; and, 2) to comply with COMAR 26.13.05.09D, which provides that a container holding hazardous waste shall always be closed during storage, except when it is necessary to add or remove waste.

156. From December 7, 2004 until March 31, 2008, Respondent was not eligible for an exemption under COMAR 26.13.03.05E with respect to the on-site storage of the hazardous waste because it did not meet the conditions of that exemption; specifically, Respondent did not have a Contingency Plan.

157. From December 7, 2004 until January 28, 2008, Respondent was not eligible for an exemption under COMAR 26.13.03.05E with respect to the on-site storage of hazardous waste because Respondent did not keep containers closed except when necessary to add or remove waste.

158. From December 7, 2004 until March 31, 2008, Respondent did not meet the requirements for an exemption under COMAR 26.13.03.05E and therefore violated COMAR 26.13.07.01A and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), by operating a hazardous waste storage facility without a permit or interim status.

159. From December 7, 2004 until March 31, 2008, Respondent violated COMAR 26.13.05.04 and 40 C.F.R. § 264 Subpart D by failing to have a Contingency Plan for the North Avenue Light Rail Maintenance Facility.

160. From December 7, 2004 until January 28, 2008, Respondent violated COMAR 26.13.05.09D and 40 C.F.R. § 264.173 by failing to keep containers closed except when necessary to add or remove waste at the North Avenue Light Rail Maintenance Facility.

COUNT XVIII. CROMWELL LIGHT RAIL MAINTENACE FACILITY

(CFCs)

161. The preceding Paragraphs are re-alleged and incorporated by reference.

162. On October 22, 2007 PEER Consultants conducted a CEA of the Cromwell Light Rail Maintenance Facility pursuant to a Multi-Facility Compliance Audit which Respondent agreed to perform as part of the settlement set forth in the Consent Agreement, Final Order and Settlement Conditions Document dated January 9, 2007, Docket Numbers CWA-03-2006-19 and RCRA-03-2006-0019.

163. Respondent owns and operates several appliances within the meaning of 40 C.F.R. § 82.152 at the Cromwell Light Rail Maintenance Facility.

164. 40 C.F.R. §82.162(a) provides, with exceptions not applicable here, that persons maintaining, servicing, or repairing appliances and persons disposing of appliances except for small appliances must certify to the Administrator that such person has acquired certified recovery or recycling equipment and is complying with the applicable requirements of 40 CF.R. Part 82 Subpart F, and that such certification be registered with the applicable EPA office as set forth in 40 C.F.R. § 82.162(a)(5).

165. From December 7, 2004 until October 22, 2007, Respondent has not registered the certification required by 40 C.F.R. § 82.162 for the recycling equipment at the Cromwell Light Rail Maintenance Facility with EPA, in violation of 40 C.F.R. § 82.162(a)(5).

COUNT XIX. CROMWELL LIGHT RAIL MAINTENACE FACILITY

(SPCC)

166. The preceding Paragraphs are re-alleged and incorporated by reference.

167. Respondent's Cromwell Light Rail Maintenance Facility has the capacity to store greater than 1,320 gallons of oil.

168. Respondent's Cromwell Light Rail Maintenance Facility was in operation as an onshore facility within the meaning of 40 C.F.R. Part 112 before August 16, 2002.

169. Respondent's Cromwell Light Rail Maintenance Facility has oil storage tanks in close proximity to municipal storm drains which terminate at the Chesapeake Bay.

170. From December 7, 2004 until September 25, 2006 Respondent did not inspect the above ground storage tanks at the Facility in accordance with the Cromwell Light Rail Maintenance Facility SPCC Plan in violation of 40 C.F.R. § 112.7(e).

COUNT XX. CROMWELL LIGHT RAIL MAINTENACE FACILITY

(Hazardous Waste)

171. The preceding Paragraphs are re-alleged and incorporated by reference.

172. From December 7, 2004 and continuing through to March 3, 2008, Respondent has generated at the Cromwell Light Rail Maintenance Facility "solid waste," as that term is defined by COMAR 26.13.02.02, RCRA Section 1004(27), 42 U.S.C. § 6903(27), and 40 C.F.R. §§ 260.10, 261.2 and 261.3.

173. Respondent is and has been, since December 7, 2004 through the period of the violations alleged herein, a "generator" of, and has engaged in the "storage" of, materials that are "solid wastes" and "hazardous waste" at the Cromwell Light Rail Maintenance Facility as those terms are defined by COMAR 26.13.01.03B and 40 C.F.R. § 260.10.

174. The Cromwell Light Rail Maintenance Facility is a "small quantity generator" of hazardous waste as that term is defined by COMAR 26.13.01.03B and 40 C.F.R. § 260.10.

175. Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and COMAR 26.13.07.01A, provide, with certain exceptions not relevant to the violations alleged herein, that a person may not operate a hazardous waste storage, treatment or disposal facility unless such person has first obtained a permit for the facility.

176. RCRA §3005(e), 42 U.S.C. § 6925(e), provides, in pertinent part, that any person who owns or operates a facility required to have a permit under RCRA §3005, which facility was in existence on November 19, 1980, or is in existence on the effective date of statutory or regulatory provisions that render the facility subject to the requirement to have a permit, has complied with the notification requirements of RCRA § 3010(a), 42 U.S.C. § 6930(a), and has applied for a permit under RCRA § 3005, shall be treated as having been issued such permit (*i.e.* "interim status") until such time as final administrative disposition of such application is made.

177. Respondent has never had "interim status" pursuant to RCRA Section 3005(c) or a permit issued pursuant to RCRA Section 3005(a) for the treatment, storage, or disposal of hazardous waste at the Cromwell Light Rail Maintenance Facility.

178. Pursuant to COMAR 26.13.03.05E, generators of hazardous waste who accumulate hazardous waste on-site for less than 90 days are exempt from the requirement to obtain a permit for such accumulation, so long as the hazardous waste is stored in accordance with a number of conditions set forth in that section, including, *inter alia,* the requirements to comply with COMAR 26.13.05.09, which, *inter alia*, requires owners and operators to inspect areas where containers of hazardous waste are stored at the Cromwell Light Rail Maintenance Facility, at least monthly, looking for leaks and for deterioration of containers and the containment system caused by corrosion or other factors.

179. From December 7, 2004 until January 28, 2008, Respondent was not eligible for an exemption under COMAR 26.13.03.05E with respect to the on-site storage of the hazardous waste because it did not meet the conditions of that exemption; specifically, Respondent did not inspect areas where containers of hazardous waste are stored at the Cromwell Light Rail Maintenance Facility, at least monthly, looking for leaks and for deterioration of containers and the containment system caused by corrosion or other factors.

180. From December 7, 2004 until January 28, 2008, Respondent did not meet the requirements for an exemption under COMAR 26.13.03.05E and therefore violated COMAR 26.13.07.01A and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), by operating a hazardous waste storage facility without a permit or interim status.

181. From December 7, 2004 until January 28, 2008, Respondent violated COMAR 26.13.05.09 and 40 C.F.R. § 264.174D by failing to inspect areas where containers of hazardous waste are stored at the Cromwell Light Rail Maintenance Facility, at least monthly, looking for leaks and for deterioration of containers and the containment system caused by corrosion or other factors.

182. This paragraph intentionally left blank.

183. COMAR 26.13.03.04A(1) requires a generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage, or disposal shall prepare an approved manifest.

184. COMAR 26.13.03.06C(1) and (2) provide that a generator who does not receive a copy of the a manifest with the handwritten signature of the owner or operator of the designated facility within 20 days of the date the waste was accepted by the initial transporter shall contact the transporter and/or owner or operator of the designated facility to determine the status of the hazardous waste and shall submit an exception report to the Secretary of the Maryland Department of the Environment if the generator has not received a copy of the manifest with the handwritten signature of the owner or operators of the designated facility within 30 days of the date the waste was accepted by the initial transporter.

185. From December 7, 2004 until January 28, 2008, Respondent had not submitted an exception report to the Secretary of the Maryland Department of the Environment when it had not received a copy of the manifest with the handwritten signature of the owner or operators of the designated facility within 30 days of the date the waste was accepted by the initial transporter from the Cromwell Light Rail Maintenance Facility, in violation of COMAR 26.13.03.06C (2) and 40 C.F.R. § 262.42(a)(2).

186. From December 7, 2004 until January 28, 2008, Respondent treated, stored and/or disposed of a solid waste, *i.e.*, spent solvent, used oil filters, high pressure sodium lamps, halogen lamps, and spent sand/glass into the waste disposal trash receptacle at the Cromwell Light Rail Maintenance Facility without first performing a hazardous waste determination on such solid waste in violation of COMAR 26.13.03.02 and 40 C.F.R. § 262.11.

COUNT XXI. CROMWELL LIGHT RAIL MAINTENACE FACILITY

(Universal Waste)

187. The preceding Paragraphs are re-alleged and incorporated by reference.

188. Respondent's Cromwell Light Rail Maintenance Facility is a small quantity handler of universal waste as that term is defined in COMAR 26.13.01.03(72-2).

189. From December 7, 2004 until January 28, 2008, Respondent did not properly label universal waste containers of used batteries at the Cromwell Light Rail Maintenance Facility, in violation of COMAR 26.13.10.17A(1) and (2).

COUNT XXII. OLD COURT METRO MAINTENANCE FACILITY

(SIP)

190. The preceding Paragraphs are re-alleged and incorporated by reference.

191. On January 23, 2008, PEER Consultants conducted a CEA of the Old Court Metro Maintenance Facility pursuant to a Multi-Facility Compliance Audit which Respondent agreed to perform as part of the settlement set forth in the Consent Agreement, Final Order and Settlement Conditions Document dated January 9, 2007, Docket Numbers CWA-03-2006-19 and RCRA-03-2006-0019.

192. From December 7, 2004 until January 28, 2008, Respondent had not trained its employees involved in the operation and maintenance of the vapor recovery system at the Old Court Metro Maintenance Facility.

193. Respondent was in violation of Section 113 of the Clean Air Act, 42 U.S.C. § 7413, and Maryland SIP including COMAR 26.11.24.02, *et seq.*, from December 7, 2004 until January 28, 2008, because Respondent had not trained its employees responsible involved in the

operation and maintenance of the vapor recovery system at the Old Court Metro Maintenance Facility.

COUNT XXIII. OLD COURT METRO MAINTENANCE FACILITY

(CFCs)

194. The preceding Paragraphs are re-alleged and incorporated by reference.

195. Respondent owns and operates several appliances within the meaning of 40 C.F.R. § 82.152 at the Old Court Metro Maintenance Facility.

196. 40 C.F.R. §82.162(a) provides, with exceptions not applicable here, that persons maintaining, servicing, or repairing appliances and persons disposing of appliances except for small appliances must certify to the Administrator that such person has acquired certified recovery or recycling equipment and is complying with the applicable requirements of 40 C.F.R. Part 82, Subpart F, and that such certification be registered with the applicable EPA office as set forth in 40 C.F.R. § 82.162(a)(5).

197. From December 12, 2004 until October 22, 2007, Respondent had not registered the certification required by 40 C.F.R. § 82.162 for the recycling equipment at the Old Court Metro Maintenance Facility with EPA, in violation of 40 C.F.R. § 82.162(a)(5).

COUNT XXIV. OLD COURT METRO MAINTENANCE FACILITY

(Stormwater)

198. The preceding Paragraphs are re-alleged and incorporated by reference.

199. At the time of the January 23, 2008 CEA, and at all times relevant hereto, the Old Court Metro Maintenance Facility was a "point source" which "discharged" "pollutants" contained in storm water runoff as those terms are defined at Sections 502(6), (14) and (16) of the Clean Water Act, 33 U.S.C. §§ 1362(6), (14) and (16), and 40 C.F.R. § 122.2.

200. Respondent was issued a General Permit for Storm Water Discharges Associated with Industrial Activity for the Old Court Metro Maintenance Facility by the State of Maryland having permit number 02-SW-1996.

201. Permit number 02-SW-1996 contains certain terms and conditions, *inter alia*, the requirement that Respondent implement a SWPPP and conduct a monthly site inspections as required by the SWPPP, at its Old Court Metro Maintenance Facility.

202. From December 7, 2004 until October 1, 2008, Respondent's SWPPP was not in compliance with the terms of its MD General Permit because Respondent had failed to develop an inspection checklist as required by and conduct monthly inspections in accordance with the SWPPP and as required by the MD General Permit. 02-SW-1996.

203. Respondent's failure to implement the requirements of permit number 02-SW-1966 constitutes a violation of Section 402 of the CWA, 33 U.S.C. § 1342.

COUNT XXV. OLD COURT METRO MAINTENANCE FACILITY

(SPCC)

204. The preceding Paragraphs are re-alleged and incorporated by reference.

205. Respondent's Old Court Metro Maintenance Facility has the capacity to store greater than 3,000 but less than 8,000 gallons of oil.

206. Respondent's Old Court Metro Maintenance Facility was in operation as an onshore facility within the meaning of 40 C.F.R. Part 112 before August 16, 2002.

207. Respondent's Old Court Metro Maintenance Facility has oil storage tanks in close proximity to municipal storm drains which discharge to the Chesapeake Bay.

208. From December 7, 2004 until April 2, 2008, Respondent did not include a heating oil underground storage tank ("UST") and an above-ground petroleum drum storage area in the inspection list contained in the Old Court Metro Maintenance Facility SPCC Plan, in violation of 40 C.F.R. § 112.3(a) and 40 C.F.R. § 112.7(e).

209. From December 7, 2004 until April 2, 2008, Respondent did not maintain records of inspections conducted pursuant to the Old Court Metro Maintenance Facility SPCC Plan, in violation of 40 C.F.R. § 112.7(e).

210. From December 7, 2004 until April 2, 2008, Respondent did not provide secondary containment for a diesel above-ground storage tank and for a drum used to store hydraulic oil at the Old Court Metro Maintenance Facility in violation of 40 C.F.R. § 112.7(c).

COUNT XXVI. OLD COURT METRO MAINTENANCE FACILITY

(Hazardous Waste)

211. The preceding Paragraphs are re-alleged and incorporated by reference.

212. From December 7, 2004 and continuing through at March 17, 2008, Respondent has generated at the Old Court Metro Maintenance Facility "solid waste," as that term is defined by COMAR 26.13.02.02, RCRA Section 1004(27), 42 U.S.C. § 6903(27), and 40 C.F.R. §§ 260.10, 261.2 and 261.3.

213. Respondent is and has been, since December 7, 2004 through the period of the violations alleged herein, a "generator" of, and has engaged in the "storage" of, materials that are "solid

wastes" and "hazardous waste" at the Old Court Metro Maintenance Facility as those terms are defined by COMAR 26.13.01.03B and 40 C.F.R. § 260.10.

214. From December 7, 2004 until March 17, 2008, Respondent treated, stored and/or disposed of a solid waste, *i.e.*, waste high pressure sodium lamps, into the waste disposal trash receptacle at the Old Court Metro Maintenance Facility without first performing a hazardous waste determination on such solid waste in violation of COMAR 26.13.03.02 and 40 C.F.R. § 262. 11.

COUNT XXVII. OLD COURT METRO MAINTENANCE FACILITY

(Universal Waste)

215. The preceding Paragraphs are re-alleged and incorporated by reference.

216. Respondent's Old Court Metro Maintenance Facility is a small quantity handler of universal waste as that term is defined in COMAR 26.13.01.03(72-2).

217. From December 7, 2004 until November 15, 2008, Respondent had not provided the information listed in COMAR 26.13.10.17C to all the employees at the Old Court Maintenance Facility who handle or have responsibility for handling or managing universal waste, in violation of COMAR 26.13.10.17C.

COUNT XXVIII. OLD COURT METRO MAINTENANCE FACILITY

(Underground Storage Tanks)

218. The preceding Paragraphs are re-alleged and incorporated by reference.

219. At the time of the January 22, 2008 CEA, and at all times relevant hereto, two (2) USTs, as described in the following subparagraphs, were located at the Old Court Maintenance Facility:

A. A 5,000 gallon UST that was installed in or about January 1, 2004 and that, at all times relevant hereto, routinely contained gasoline, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and COMAR 26. 10.02.04B(48).

B. A 5,000 gallon UST that was installed in or about January 1, 2004 and that, at all times relevant hereto, routinely contained diesel fuel, a "regulated substance" as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7).

220. From January 1, 2004 until the date of this CAFO, the USTs at the Old Court Metro Maintenance Facility have been "petroleum UST systems" and "new tank systems" as these terms are defined in COMAR 26.10.02.04B(43) and (31), respectively.

221. USTs at the Old Court Metro Maintenance Facility are and were, at all times relevant to this CAFO, used to store "regulated substance(s)" at Respondent's Old Court Metro Maintenance Facility, as defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7) and COMAR 26.10.02.04B(48).

222. COMAR 26.10.05.02C(2)(a) provides that underground piping that routinely contains regulated substances and conveys regulated substances under pressure must be equipped with an automatic line leak detector which must be tested annually as required by COMAR 26.10.05.05B.

223. Respondent failed to conduct annual tests of the line leak detectors for the piping associated with the USTs at the Old Court Metro Maintenance Facility which routinely contained regulated substances and convey regulated substances under pressure, from December 7, 2004 through March 24, 2008.

224. Respondent violated COMAR 26.10.05.05B by failing to have an annual test for the operation of the line leak detectors associated with USTs used to store regulated substances gasoline at the Old Court Metro Maintenance Facility from December 7, 2004 through March 24, 2008.

COUNT XXIX. WITHDRAWN

225. Withdrawn.

226. Withdrawn.

227. Withdrawn.

COUNT XXX. MARC FREDERICK FACILITY

(Stormwater)

228. The preceding Paragraphs are re-alleged and incorporated by reference.

229. On April 4, 2008, PEER Consultants conducted a CEA of the MARC Frederick Facility pursuant to a Multi-Facility Compliance Audit which Respondent agreed to perform as part of the settlement set forth in the Consent Agreement, Final Order and Settlement Conditions Document dated January 9, 2007, Docket Numbers CWA-03-2006-0019 and RCRA-03-2006-0019.

230. At the time of the April 4, 2008 CEA, and at all times relevant hereto, the MARC Frederick Facility was a "point source" which "discharged" "pollutants" contained in storm water runoff as those terms are defined at Sections 502(6), (14) and (16) of the Clean Water Act, 33 U.S.C. §§ 1362(6), (14) and (16), and 40 C.F.R. § 122.2.

231. Respondent was issued a General Permit for Storm Water Discharges Associated with Industrial Activity for the MARC Frederick Facility by the State of Maryland having permit number 02-SW-1571.

232. Permit number 02-SW-1571 contains certain terms and conditions, *inter alia*, the requirement that Respondent implement a SWPPP and conduct monthly site inspections as required by the SWPPP, at its MARC Frederick Facility.

233. From December 7, 2004 until July 3, 2008, Respondent was not in compliance with the terms of its MD General Permit because Respondent had failed to develop an inspection checklist as required by and conduct monthly inspections in accordance with the MARC Frederick Facility SWPPP and as required by the MD General Permit. 02-SW-1571.

234. From December 7, 2004 until July 3, 2008, Respondent was not in compliance with the terms of its MD General Permit because Respondent had failed to implement the corrective action procedures contained in the MARC Frederick Facility SWPPP and as required by the MD General Permit 02-SW-1571.

235. Respondent's failure to implement the requirements of permit number 02-SW-1571 constitutes a violation of Section 402 of the CWA, 33 U.S.C. § 1342.

COUNT XXXI. MARC FREDERICK FACILITY

(SPCC)

236. The preceding Paragraphs are re-alleged and incorporated by reference.

237. Respondent's MARC Frederick Facility has the capacity to store greater than 1,320 gallons of oil.

238. Respondent's MARC Frederick Facility was in operation as an onshore facility within the meaning of 40 C.F.R. Part 112 before August 16, 2002.

239. Respondent's MARC Frederick Facility has oil storage tanks in close proximity to municipal storm drains which discharge into the Chesapeake Bay.

240. From December 7, 2004 until July 3, 2008, Respondent did not conduct inspections as required by the MARC Frederick Facility SPCC Plan, in violation of 40 C.F.R. § 112.7(e).

241. From December 7, 2004 until April 2, 2008, Respondent did not maintain records of inspections conducted pursuant to the MARC Frederick Facility SPCC Plan, in violation of 40 C.F.R. § 112.7(e).

COUNT XXXII. MARC FREDERICK FACILITY

(Hazardous Waste)

242. The preceding Paragraphs are re-alleged and incorporated by reference.

243. From December 7, 2004 and continuing through at least March 17, 2008, Respondent has generated at the MARC Frederick Facility "solid waste," as that term is defined by COMAR 26.13.02.02, RCRA Section 1004(27), 42 U.S.C. § 6903(27), and 40 C.F.R. §§ 260.10, 261.2 and 261.3.

244. Respondent is and has been, since December 7, 2004 through the period of the violations alleged herein, a "generator" of, and has engaged in the "storage" of, materials that are "solid wastes" and "hazardous waste" at the MARC Frederick Facility as those terms are defined by COMAR 26.13.01.03B and 40 C.F.R. § 260.10.

245. From December 7, 2004 until April 8, 2008, Respondent treated, stored and/or disposed of a solid waste, *i.e.*, waste high pressure sodium lamps, into the waste disposal trash receptacle at the MARC Frederick Facility without first performing a hazardous waste determination on such solid waste in violation of COMAR 26.13.03.02 and 40 C.F.R. § 262.11.

246. From December 7, 2004 until October 21, 2008, Respondent treated, stored and/or disposed of a solid waste, *i.e.*, an unknown liquid substance stored in a five gallon pail at the MARC Frederick Facility without first performing a hazardous waste determination on such solid waste in violation of COMAR 26.13.03.02 and 40 C.F.R. § 262. 11.

COUNT XXXIII. MARC FREDERICK FACILITY

(Universal Waste)

247. The preceding Paragraphs are re-alleged and incorporated by reference.

248. Respondent's MARC Frederick Facility is a small quantity handler of universal waste as that term is defined in COMAR 26.13.01.03(72-2).

249. From December 7, 2004 until November 15, 2008, Respondent had not provided the information listed in COMAR 26.13.10.17C to all the employees at the MARC Frederick Facility who handle or have responsibility for handling or managing universal waste, in violation of COMAR 26.13.10.17C.

COUNT XXXIV MARC MARTIN FACILITY

(Stormwater)

250. The preceding Paragraphs are re-alleged and incorporated by reference.

251. On March 4, 2008, PEER Consultants conducted a CEA of the MARC Martin Facility pursuant to a Multi-Facility Compliance Audit which Respondent agreed to perform as part of

the settlement set forth in the Consent Agreement, Final Order and Settlement Conditions Document dated January 9, 2007, Docket Numbers CWA-03-2006-19 and RCRA-03-2006-0019.

252. At the time of the March 4, 2008 CEA, and at all times relevant hereto, the MARC Martin Facility was a "point source" which "discharged" "pollutants" contained in storm water runoff as those terms are defined at Sections 502(6), (14) and (16) of the Clean Water Act, 33 U.S.C. §§ 1362(6), (14) and (16), and 40 C.F.R. § 122.2.

253. Respondent was issued a General Permit for Storm Water Discharges Associated with Industrial Activity for the MARC Martin Facility by the State of Maryland having permit number 02-SW-1952.

254. Permit number 02-SW-1952 contains certain terms and conditions, *inter alia*, the requirement that Respondent implement a SWPPP and conduct monthly site inspections as required by the SWPPP, at its MARC Martin Facility.

255. From December 7, 2004 until August 13, 2008, Respondent was not in compliance with the terms of is MD General Permit because Respondent had failed to develop an inspection checklist as required by and conduct monthly inspections in accordance with the MARC Martin Facility SWPPP and as required by the MD General Permit 02-SW-1952.

256. From December 7, 2004 until August 13, 2008, Respondent was not in compliance with the terms of its MD General Permit because Respondent had failed to update its MARC Martin Facility SWPPP to reflect current conditions at the Facility as required by the MD General Permit 02-SW-1952.

257. Respondent's failure to implement the requirements of permit number 02-SW-1952 constitutes a violation of Section 402 of the CWA, 33 U.S.C. § 1342.

COUNT XXXV MARC MARTIN FACILITY

(Hazardous Waste)

258. The preceding Paragraphs are re-alleged and incorporated by reference.

259. From December 7, 2004 and continuing through to the present, Respondent has generated at the MARC Martin Facility "solid waste," as that term is defined by COMAR 26.13.02.02, RCRA Section 1004(27), 42 U.S.C. § 6903(27), and 40 C.F.R. §§ 260.10, 261.2 and 261.3.

260. Respondent is and has been, since December 7, 2004 through the period of the violations alleged herein, a "generator" of, and has engaged in the "storage" of, materials that are "solid wastes" and "hazardous waste" at the MARC Martin Facility as those terms are defined by COMAR 26.13.01.03B and 40 C.F.R. § 260.10.

261. From December 7, 2004 until April 8, 2008, Respondent treated, stored and/or disposed of a solid waste, *i.e.*, waste high pressure sodium lamps and halogen lamps, at the MARC Martin

Facility without first performing a hazardous waste determination on such solid waste in violation of COMAR 26.13.03.02 and 40 C.F.R. § 262. 11.

COUNT XXXVI. BRUNSWICK MARC FACILITY

(Stormwater)

262. The preceding Paragraphs are re-alleged and incorporated by reference.

263. On April 2, 2008, PEER Consultants conducted a multimedia CEA of the Brunswick MARC Facility pursuant to a Multi-Facility Compliance Audit which Respondent agreed to perform as part of the settlement set forth in the Consent Agreement, Final Order and Settlement Conditions Document dated January 9, 2007, Docket Numbers CWA-03-2006-19 and RCRA-03-2006-0019.

264. At the time of the April 2, 2008 CEA, and at all times relevant hereto, the Brunswick MARC Facility was a "point source" which "discharged" "pollutants" contained in storm water runoff as those terms are defined at Sections 502(6), (14) and (16) of the Clean Water Act, 33 U.S.C. §§ 1362(6), (14) and (16), and 40 C.F.R. § 122.2.

265. Respondent was issued a General Permit for Storm Water Discharges Associated with Industrial Activity for the Brunswick MARC Facility by the State of Maryland having permit number 03-DP-0305/MD0000221.

266. Permit number 03-DP-0305/MD0000221 contains certain terms and conditions, *inter alia*, the requirement that Respondent implement a SWPPP and conduct a monthly site inspections as required by the SWPPP, at its Brunswick MARC Facility.

267. From December 7, 2004 until October 9, 2008, Respondent was not in compliance with the terms of its MD General Permit because Respondent had failed to fully implement the Brunswick MARC Facility SWPPP in accordance with the Brunswick MARC Facility SWPPP and as required by MD General Permit 03-DP-0305/MD0000221.

268. Respondent's failure to implement the requirements for the Brunswick General Permit constitutes a violation of Section 402 of the CWA, 33 U.S.C. §1342.

COUNT XXXVII. BRUNSWICK MARC FACILITY

(SPCC)

269. The preceding Paragraphs are re-alleged and incorporated by reference.

270. Respondent's Brunswick MARC Facility has the capacity to store greater than 42,000 gallons but less than 200,000 gallons of oil.

271. Respondent's Brunswick MARC Facility was in operation as an onshore facility within the meaning of 40 C.F.R. Part 112 before August 16, 2002.

272. Respondent's Brunswick MARC Facility has oil storage tanks in close proximity to municipal storm drains which discharge into the Chesapeake Bay.

273. From December 7, 2004 until October 9, 2008, Respondent had an inadequate SPCC Plan, for the Brunswick MARC Facility in that not all tanks containing oil were listed in the Brunswick MARC Facility SPCC Plan, in violation of 40 C.F.R. § 112.7(e).

274. From December 7, 2004 until October 9, 2008, Respondent had inadequate secondary containment for the Brunswick MARC Facility in that rainwater was not drained from the secondary containment of the portable lubricating oil containers, as required by 40 C.F.R. § 112.7(c), in violation of 40 C.F.R. § 112.7(c).

COUNT XXXVIII. FEDERALSBURG FACILITY

(Stormwater)

275. The preceding Paragraphs are re-alleged and incorporated by reference.

276. On March 5, 2008, PEER Consultants conducted a CEA of the Federalsburg Facility pursuant to a Multi-Facility Compliance Audit which Respondent agreed to perform as part of the settlement set forth in the Consent Agreement, Final Order and Settlement Conditions Document dated January 9, 2007, Docket Numbers CWA-03-2006-19 and RCRA-03-2006-0019.

277. At the time of the March 5, 2008 CEA, and at all times relevant hereto, the Federalsburg Facility was a "point source" which "discharged" "pollutants" contained in storm water runoff as those terms are defined at Sections 502(6), (14) and (16) of the Clean Water Act, 33 U.S.C. §§ 1362(6), (14) and (16), and 40 C.F.R. § 122.2.

278. Respondent was issued a General Permit for Storm Water Discharges Associated with Industrial Activity for the Federalsburg Facility by the State of Maryland having permit number 02-SW-2015.

279. Permit number 02-SW-2015 contains certain terms and conditions, *inter alia*, the requirement that Respondent implement a SWPPP and conduct monthly site inspections as required by the SWPPP, at its Federalsburg Facility.

280. From December 7, 2004 until September 23, 2008, Respondent was not in compliance with the terms of its MD General Permit because Respondent had failed to develop an inspection checklist as required by and conduct monthly inspections in accordance with the Federalsburg Facility SWPPP and as required by the MD General Permit 02-SW-2015.

281. From December 7, 2004 until September 23, 2008, Respondent was not in compliance with the terms of its MD General Permit because Respondent had failed to address fertilizer loading and unloading procedures in the Federalsburg Facility SWPPP and as required by the MD General Permit 02-SW-2015.

282. From December 7, 2004 until September 23, 2008, Respondent was not in compliance with the terms of its MD General Permit because Respondent had failed to address the discharge of locomotive washwater in the Federalsburg Facility SWPPP and as required by the MD General Permit 02-SW-2015.

283. Respondent's failure to implement the requirements of the permit number 02-SW-2015 constitutes a violation of Section 402 of the CWA, 33 U.S.C. § 1342. From December 7, 2004 until September 23, 2008, Respondent was not in compliance with the terms of its MD General Permit because Respondent had failed to address fertilizer loading and unloading procedures in the Federalsburg Facility SWPPP and as required by the MD General Permit.02-SW-2015.

IV. SUPPLEMENTAL ENVIRONMENTAL PROJECT

284. Respondent shall complete the following SEP, which the parties agree is intended to secure significant environmental or public health protections. No more than SIXTY (60) DAYS after receiving a true and correct copy of this fully executed and effective CAFO, Respondent shall commence the Multi-Facility Geographic Information System Supplemental Environmental Project as described in the SEP Statement of Work ("SEP SOW") appended to this Consent Agreement as Attachment A. The SEP shall be completed within three years of the effective date of this CAFO.

285. The total required Actual SEP Expenditures shall not be less than $800,000.

286. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report described in this Section.

287. Respondent hereby certifies that, as of the date of its signature to this Consent Agreement, 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 any other agreement, or grant or as injunctive relief in this or any other legal proceeding or in compliance with state or local requirements. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP or any portion thereof.

288. Respondent shall submit a SEP Completion Report to EPA no later than Forty-two months (3 years and six months) after the effective date of this CAFO. The SEP Completion Report shall contain the following information:

(i) A detailed description of the SEP as implemented, describing how the SEP has fulfilled all the requirements described in the SEP SOW;

(ii) A description of any operating problems encountered and the solutions utilized by Respondent to address such problems;

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

(iv) Certification in accordance with this Section of this CAFO 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.

289. Failure to submit a SEP Completion Report required by this Section shall be a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to Section VI.

290. EPA may inspect any location listed in the SEP SOW at any time to confirm that the SEP is being undertaken in conformity with the specifications referenced herein.

291. 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 documentation of any such underlying research and data to EPA within fifteen days of request for such information. In all documents and reports, including without limitation, any SEP report, submitted to EPA pursuant to this CAFO Respondent shall, by the appropriate government official, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and complete. 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: _____

292. All submissions pursuant to Section IV shall be sent to:

Paul Dressel (3EC10)
Office of Enforcement, Compliance and Environmental Justice
United States Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

-and-

Joyce Howell (3RC30) [Cover letter only]

Sr. Counsel
Office of Regional Counsel
United States Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

293. Following receipt of the SEP Completion Report described in this Section, EPA will do one of the following:

A. Notify Respondent in writing of any deficiency in the SEP Completion Report itself ("Notice of Deficiency") and grant and additional THIRTY (30) DAYS for Respondent to correct the deficiency;

B. Notify Respondent in writing of EPA's determination that the project has been completed satisfactorily ("Notice of Approval"); or

C. Notify Respondent in writing that the project has not been completed satisfactorily ("Notice of Disapproval"), in which case, EPA may seek stipulated penalties in accordance with Section VI.

V. DISPUTE RESOLUTION

294. Before EPA invokes any of its rights under Section VI, (Stipulated Penalties) and Paragraph 289 (SEP Completion Report), MTA shall have the right to seek a written appeal to the 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 Section XIII. of this CAFO.

295. A proposed disapproval of the SEP Completion Report must be based solely upon the alleged lack of implementation of the SEP and/or alleged failure to comply with any of the requirements of paragraphs 284 through 291, except as provided in paragraph 297(B). Respondent may appeal the disapproval of the SEP Completion Report to the Deputy Regional Administrator, U.S. Environmental Protection Agency, Region III (DRA) within ten (10) days of receipt of notice of the disapproval 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 its receipt 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 all parties.

296. If EPA elects to exercise option (C) in paragraph 293 above, EPA shall permit the Respondent the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to the 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 an 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 294. 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 if the written notification is upheld by the Deputy Regional Administrator, if appealed. To the extent that the Deputy Regional Administrator finds in favor of Respondent or revises the written notification of deficiency or disapproval, that determination shall be implemented by Respondent. In the event the SEP is not completed as contemplated herein, as determined by EPA or as decided by the Deputy Regional Administrator, if appealed, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Section VI (Stipulated Penalties).

VI. STIPULATED PENALTIES

297. In the event that Respondent fails to comply with any of the terms or conditions of this Consent Agreement relating to the performance of the SEP described in the SOW and/or to the extent that the Actual Expenditures for the SEP do not equal or exceed the amount of Actual SEP Expenditures required to be incurred under Section IV of this Consent Agreement, Respondent shall be liable for stipulated penalties according to the provisions below:

A. Except as provided in subparagraph (B) immediately below, for a SEP which has not been completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount of $800,000.

B. If the SEP is not completed in accordance with Section IV, but the Respondent: (i) had made good faith and timely efforts to complete the project; and (ii) has certified, with supporting documentation, that at least 90% of the Actual SEP Expenditures required to be incurred under Section IV were expended on the SEP, Respondent shall not be liable for any stipulated penalty;

C. If the SEP is completed in accordance with Section IV, but the Respondent spent less than ninety percent (90%) of the amount of the Actual SEP Expenditures required to be incurred under Section IV, Respondent shall pay as a stipulated penalty to the United States in the amount of $80,000.00.

D. If the SEP is completed in accordance with Section IV, and the Respondent spent at least 90% of the Actual SEP Expenditures required to be incurred under Section IV, Respondent shall not be liable for any stipulated penalty;

E. For failure to submit the SEP Completion Report required by Section IV, Respondent shall pay a stipulated penalty in accordance with the schedule below for each day after the deadline for submission pursuant to the terms of this CAFO.

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

298. The determination of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith timely effort to implement the SEP shall be within the sole discretion of EPA after completion of the dispute resolution process set forth above in Section V, if applicable.

299. Stipulated penalties for subparagraphs A, C, and E, above, shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity unless otherwise provided in this agreement. In no event shall the total of stipulated penalties, plus any Actual SEP Expenditures approved by EPA pursuant to Section IV of this CAFO, exceed $800,000. Such stipulated penalties shall not accrue during the period of any Dispute Resolution under this CAFO.

300. Respondent shall pay stipulated penalties within Thirty (30) DAYS after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance Paragraph 313.

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

VII. LANGUAGE TO BE INCLUDED IN PUBLIC STATEMENTS

302. 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. PROVISIONS IN EVENT OF DELAY OR ANTICIPATED DELAY

303. 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 not more than TWENTY(20) DAYS after the delay or when Respondent knew or should have known 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 Respondent to minimize the delay, and the timetable by which those measures shall 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 or of no effect as to the particular incident involved and constitute a waiver of the Respondent's right to seek an extension of the time for performance of its obligations under this CAFO based on such incident.

304. 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.

305. In the event that EPA does not agree that the delay in achieving compliance with this CAFO has been or will be caused by circumstances entirely 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 procedures set forth in section V of this CAFO.

306. The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent shall rest with the 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 this Section. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of a subsequent step.

IX. SATISFACTION OF SETTLEMENT CONDITIONS

307. A determination of compliance with the conditions set forth herein will be based upon, *inter alia*, copies of records and reports submitted by Respondent to EPA under this CAFO and any inspections of work performed under the SEP that EPA reasonably determines are necessary to evaluate compliance. Respondent is aware that the submission of false or misleading information to the United States government may subject it to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to Complainant regarding the matters at issue in the Factual Allegations and Conclusions of Law are false, or in any material respect, inaccurate.

308. If EPA determines that Respondent has complied fully with the conditions set forth herein and those set forth in the first CAFO that was effective February 7, 2007, EPA, through the Regional Administrator of U.S. EPA - Region III, or his designee, shall promptly issue a Letter of Remittance Upon Satisfaction of Settlement Conditions, which shall state Respondent has performed fully the conditions set forth in both CAFOs and paid all the penalty amounts due pursuant to the terms of both CAFOs.

X. CIVIL PENALTY

309. In settlement of EPA's claims for civil monetary penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a total civil penalty of **$250,000**, which Respondent agrees to pay in accordance with the terms set forth

below. $38,614.00 of the penalty will be paid to the Oil Spill Liability Trust Fund-311 as set forth in Paragraph 313, the remaining amount will be paid in accordance with Paragraph 314.

310. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors set forth in Section 113(b) of the CAA, 42 U.S.C. § 7413(b) and the *Clean Air Act Stationary Source Civil Penalty Policy*-October 25, 1991, and the *Clean Air Act Civil Penalty Policy for violations of 40 C.F.R. Part 82, Subpart F: Maintenance, Service, Repair, and Disposal of Appliances containing Refrigerant*-June 1, 1994; RCRA § 3008(a)(3) and (g), 42 U.S.C. § 6928(a)(3) and (g), and the RCRA Civil Penalty Policy (June 2003); Section 9006(c) and (e) of RCRA, 42 U.S.C. § 6991e(c) and (e) and the *U.S. EPA Penalty Guidance for Violations of UST Regulations* (November 1990), Section 309(d) of the Act, 33 U.S.C. § 1319(d) and the *Interim Clean Water Act Settlement Penalty Policy* (March 1, 1995); Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8) and *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act* (August 1998).

311. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below.

312. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a Consent Agreement and Final Order begins to accrue on the effective date of this Consent Agreement and Final Order. However, EPA will not seek to recover interest on any amount of such 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).

SPCC PENALTY PAYMENT

313. Payment of the civil penalty amount of **$38,614.00** for Counts II, VI, XI, XVI, XIX, XXV, XXXI, and XXXVII above, shall be made by cashier's check, certified check or electronic wire transfer or online payment, in the following manner:

A. All payments by Respondent shall reference its names and address, Docket Number of this action (Docket No. RCRA-CWA-CAA-03-2012-0038), and "Oil Spill Liability Trust Fund – 311";

B. All checks shall be made payable to "United States Treasury"

C. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency, Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

D. All payments made by check and sent by overnight delivery service shall be addressed and sent to:

U.S. Environmental Protection Agency, Fines and Penalties
U.S. Bank Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The Customer Service contact for the above method of payment is Heather Russell at 513-487-2044.

E. All electronic wire transfer payments shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account Number 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

The Federal Reserve Bank of New York Customer Service phone number for the above method of payment is 212-720-5000.

F. All payments through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

U.S. Treasury
5700 Rivertech Court
Riverdale, MD 20737
Contact- Heather Russell at 513-487-2044
ABA = 051036706
Transaction Code 22 – checking
Environmental Protection Agency
Account 310006
CTX Format

314. Payment of the civil penalty in the amount of **$211,386.00**, shall be made by either cashier's check, certified check, electronic wire transfer or online payment, in the following manner:

A. All payments by Respondent shall reference its name and address, and the Docket Number of this action, i.e., Docket No. RCRA-CWA-CAA-03-2012-0038

B. All checks shall be made payable to "United States Treasury";

C. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Fines and Penalties-CFC
P.O. Box 979077
St. Louis, MO 63197-9000

D. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2-GL
ATTN Box 979077
1005 Convention Plaza
St. Louis, MO 63101

Contact: Heather Russell at 513-487-2044

E. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

F. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

G. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

U.S. Treasury
5700 Rivertech Court
Riverdale, MD 20737
Contact – Heather Russell at 513-487-2044ABA = 051036706
Account 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

H. A copy of Respondent's check, a copy of Respondent's electronic fund transfer, or copy of Respondent's online payment confirmation shall be sent simultaneously to:

Joyce A. Howell
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

XI. FULL AND FINAL SATISFACTION

315. This CAFO constitutes a settlement by EPA of its claims for civil penalties pursuant to Sections 309(g)(2)(B) and 311(b)(6) of the Clean Water Act,, 33 U.S.C. §§ 1319 (g)(2)(B) and 1321(b)(6), Sections 3008(a) and (g) and 9006 of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6928(a) and (g) and 6991e, and Section 113 of the Clean Air Act, 42 U.S.C. § 7413, for the violations alleged in this CAFO. Nothing in this Consent Agreement requires Respondent to perform any compliance tasks.

XII. CERTIFICATION OF COMPLIANCE

316. Respondent certifies to EPA, upon investigation, to the best of its knowledge and belief, that it currently is complying with the provisions of COMAR 26.11.24.02 and .06 of the Maryland State Implementation Plan, Subtitles C and I of RCRA, the MdHWMR, the Maryland Underground Storage Tank Program, Section 311j, 33 U.S.C. § 1321(j) and the terms of the Maryland Pollutant Discharge Elimination System Permits for Discharges of Storm Water from Industrial Activity, that are referenced in this Consent Agreement.

XIII. RESERVATION OF RIGHTS

317. 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. In addition, this Consent Agreement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

XIV. OTHER APPLICABLE LAWS

318. Nothing in this CAFO shall relieve Respondent of any duties otherwise imposed on it by applicable federal, state or local law and/or regulations.

XV. AUTHORITY TO BIND THE PARTIES

319. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and bind Respondent hereto, after obtaining the approval of the Maryland Board of Public Works. Respondent's expenditures are subject to appropriations. If appropriated funds are not available to fulfill all of the Respondent's obligations, Respondent shall seek additional funding as soon as possible,

but no later than the subsequent annual budgetary process. Failure to obtain appropriations does not excuse MTA's obligation of performance under applicable laws. The approval of the Maryland Board of Public Works is indicated by Appendix B to this CAFO.

XVI. ENTIRE AGREEMENT

320. This Consent Agreement and the attached Final Order constitute the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Consent Agreement and the attached Final Order.

XVII. EFFECTIVE DATE

321. This ORDER will be issued after a forty (40) day comment period, execution by an authorized representative of the EPA and filing with the Regional Hearing Clerk. It will become final and effective 30 days after issuance as provided by 40 C.F.R. § 22.45(b).

For Respondent:

9/13/11
Date

Maryland Transit Administration

by: Beverley K. Swaim-Staley
Maryland Department of Transportation

FOR FORM AND LEGAL SUFFICIENCY:

Denise Ferguson, Principal Counsel, MDOT

8/31/11
Date

by: Ralign T. Wells, Administrator
Maryland Transit Administration

FOR FORM AND LEGAL SUFFICIENCY:

Denise Ferguson, Principal Counsel, MDOT

Complainant:

Sept 22, 2012
Date

U.S. Environmental Protection Agency,
Region III

by: Joyce A. Howell

After reviewing the foregoing Consent Agreement and other pertinent information, the Office of Enforcement, Compliance and Environmental Justice, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

March 5 2012
Date

Samantha Beers, Director,
Office of Enforcement, Compliance
and Environmental Justice
EPA Region III

ATTACHEMENT A
SUPPLEMENTAL ENVIRONEMNTAL PROJECT
STATEMENT OF WORK

CONFIDENTIAL DOCUMENT
FOR SETTLEMENT PURPOSES ONLY

Subject: **Geographic Information System as a Supplemental Environmental Project (SEP)**
Second CAFO

To: Troy Jordan

From: Bernadette Bridges

Date: August 10, 2011

INTRODUCTION

The Maryland Transit Administration (MTA) is proposing to develop a Geographic Information System (GIS) based program as a Supplemental Environmental Project (SEP). The GIS for the MTA will play an important part in supporting MTA's role of protecting and preserving the environment for present and future generations.

This proposed SEP improves, protects or reduces risks to the public health and the environment through, among other things, its planning and preparedness features, and is an environmentally beneficial project consistent with the EPA's E*mergency Planning and Preparedness* description (Referencing the *EPA's Supplemental Environmental Projects Policy effective May 1, 1998).* The SEP will assist with the development, management and quick and accurate retrieval of current information that is directly useful for emergency planning. Under the SEP policy, computers and software are examples of the tools that may be useful for collecting information to assess risks associated with potentially hazardous chemicals present at facilities, developing emergency response plans, training emergency response personnel, and responding more effectively to chemical spills.

The GIS will serve as a tool to support the MTA's management and various departments including the Office of Safety, Quality Assurance & Risk Management, Training, Operations, Facilities Maintenance, Planning, Engineering, and Construction in managing the MTA's overall environmental compliance effort.

OBJECTIVES

The GIS will be designed to support MTA management and departments by providing reference, resource and compliance information in a centralized location. The MTA's objectives in developing the GIS system include:

- *Supporting Emergency Management and Response Efforts;*
- *Enhancing Environmental Compliance* Activities *Throughout* MTA*;*
- *Improving and Centralizing Document Control and Record-keeping Activities;*
- *Allowing for Efficient Retrieval of Reference Materials for MTA and Emergency Personnel;*
- *Providing GIS Mapping to Depict MTA's Environmental Infrastructure.*

Examples of the objectives are as follows.

Supporting Emergency Management and Response Efforts

MTA's GIS SEP will be designed to be inter-operable with Maryland's Emergency Management Mapping Application (EMMA) system.

EMMA supports emergency management personnel by allowing access and viewing relevant information depicted at a location before, during, and after an incident occurs. By tying MTA's GIS to EMMA, we will be able to bring MTA specific information to emergency managers and responders. EMMA is a secure, web-based GIS application that aids emergency responders in:

- Identifying incident locations from the field;
- Generating location-specific reports;
- Visualizing incident locations and potential impacts via a map;
- Performing site-specific analysis; and
- Supporting emergency response coordination efforts.

Enhancing Environmental Compliance Activities throughout MTA

The GIS will provide upper management a tool by providing information to ensure environmental infrastructure is fully funded. The GIS will also provide access to reference materials to field personnel such as access to facility specific information, inspection procedures, maintenance activities and schedules. The GIS will also allow for the assigning of specific tasks to individuals in support of MTA's environmental compliance activities.

Improving and Centralizing Document Control and Record-keeping Activities

The GIS will provide a means of accessing electronic storage of data to support centralized document control and record-keeping efforts. Examples include tank tightness testing records, fuel reconciliation and inventory records, and underground and aboveground storage tank inspection records.

Allowing for Efficient Retrieval of Reference Materials for MTA and Emergency Personnel

The GIS will allow for convenient retrieval of reference and operational information for all levels of MTA personnel that are important in effectively managing environmental and emergency response activities. The GIS will be designed to include a repository for instant access to documentation supporting day-to-day operations including Standard Operating Procedures (SOP). Examples include creating an electronic system and providing instant access to MTA's (SOPs) for fuel reconciliation, facility inspections and reporting, scheduling for maintenance activities, and activities associated Stormwater Pollution Preventions Plans (SWPPPs) and Spill Prevention Control and Counter-measure (SPCC) plans.

Providing GIS Mapping to Depict MTA's Environmental Infrastructure

The GIS will provide a reference tool for mapping important environmental infrastructure in and around MTA facilities. Examples include the location of spill control kits and drainage pathways

for potential spills and releases, and the location of Underground and Aboveground Storage Tanks.

KEY GIS COMPONENTS

The GIS based system will also enhance our ability to monitor ongoing facility status once the program is developed. Therefore, this is not a 'one-time' event, but instead is a project intended to yield ongoing benefits. The MTA has identified the following eight components (layers) that will be assessed and included in the GIS:

1. Layer(s) to identify the location of underground storage tanks, oil/water separators, and aboveground storage tanks at MTA facilities. The location of these items will be linked to information in support of MTA personnel for reference to:
    - Assist with inspection scheduling,
    - Document maintenance activities,
    - Provide a reference resource for SOPs.

2. Layer(s) to identify drainage pathways for potential spills and releases. The location of drainage pathways will allow MTA personnel to:
    - Be aware of storm drain locations,
    - Document the potential runoff in the event of a spill or release,
    - Support the MTA in implementing prompt corrective action in the event of a spill, release, or illicit discharge.

3. Layer(s) to provide information depicting emergency evacuation and escape routes. The layer will include information for MTA personnel including:
    - The location of fire extinguishers,
    - Information for emergency response personnel including location of hazardous materials and fuel tanks.

4. Layer(s) that will identify the location of emergency spill equipment. The emergency spill equipment locations will be linked to information allowing MTA personnel to:
    - Be aware of the spill kit locations,
    - Monitor the inventories/supplies in the spill kits,
    - Quickly access MTA and spill remediation contractor emergency numbers.

5. Layer(s) that will show the location of hazardous waste and hazardous materials storage areas. The locations will be linked to the information and:
    - Identification of quantities stored,
    - Hazardous waste identification, MSDS documentation, and storage requirements,
    - Identify storage locations,
    - Proximity of hazardous materials/storage to spill kits.

6. Layer(s) identifying wetlands areas and stormwater management activities. The layer will support MTA personnel in:
    - Scheduling maintenance of stormwater facilities,
    - Inspection of stormwater management ponds,
    - Date dependant activities – those actions that need to be completed by a specific date (i.e. NPDES permit milestones, etc.),
    - Monitor construction activities,

- Location of stormwater best management practices.

7. Layer(s) that will provide a repository for permit copies including:
   - Air permits (Boilers, Spray Booths, Printing Presses and Gasoline Tanks),
   - Oil Operations Control Permits,
   - Department of Labor Permits,
   - General Discharge Permits (Stormwater),
   - Sanitary Sewer Permits,
   - NPDES Permit,
   - The system will offer easy accessibility to stakeholders.

8. Layer(s) that will document and maintain electronic copies of:
   - SPCC Plans,
   - SWPPP Plans,
   - Other environmental related documents including schedules and project plans.

SYSTEM ACCESS

The MTA's GIS will be confidential to the extent allowed by Maryland and Federal law for security reasons. However, general environmental information may be made available to other federal, state or local agencies upon request or as necessary. MTA will address the security of the GIS by identifying various levels of security, and limiting the personnel who are allowed to update or modify data.

The timeline for GIS SEP development and implementation is currently estimated to be three years. A system wide operations manual will be developed to ensure longevity in its usage and applicability. It is essential that this GIS SEP is functional beyond the three-year implementation phase.

SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP) SCOPE

The scope of the SEP will be defined as follows.

The MTA will develop and implement the framework for the basic GIS. Implementation will include 3 phases:

1. Concept & Plan Development Phase
2. System Development Phase
3. Integration & Test Phase

The scope of the effort will be limited to following sites:

1. Eastern Bus Division
2. Northwest Bus Division
3. North Avenue Light Rail Maintenance Facility
4. Cromwell Light Rail Maintenance Facility
5. Old Court Metro Maintenance Facility
6. Frederick MARC Facility
7. Martin's MARC Storage Facility
8. Wabash Metro Maintenance Facility

SUMMARY

The MTA believes the proposed Supplemental Environmental Project (SEP) is an environmentally beneficial project that complies with *EPA's Supplemental Environmental Projects Policy effective May 1, 1998* because it:

- Is consistent with the basic definition of a SEP,
- Ensures that legal guidelines, including nexus are satisfied,
- Ensures the project is consistent with the *Emergency Planning and Preparedness* description.

When MTA completes the SEP as described in this document, the SEP will be completed.

ATTACHMENT B
APPROVAL BY THE BOARD OF PUBLIC WORKS

SUPPLEMENT B
DEPARTMENT OF BUDGET AND MANAGEMENT
ACTION AGENDA

GENERAL MISCELLANEOUS

ITEM: 10-GM

Agency Contact: Dorothy Morrison
410-865-1130
dmorrison@mdot.state.md.us

DEPARTMENT/PROGRAM: Transportation (MDOT)
Maryland Transit Administration (MTA)
Office of Safety and Risk Management

AMOUNT OF REQUEST: $1,050,000

FUND SOURCE: 100% Special (MTA Capital Program)

APPROPRIATION CODE: J05H0105

DESCRIPTION: Request for approval of a settlement and payment of fines associated with an administrative enforcement action commenced by the United States Environmental Protection Agency (EPA) against the State of Maryland, the Maryland Department of Transportation (MDOT), and the Maryland Transit Administration (MTA). The administrative enforcement action arises from a multi-media environmental inspection of MTA's facilities by EPA, and the administrative complaints in the case alleged violations of the Clean Water Act (CWA), 33 U.S.C. §1251, *et seq.*, as well as the Resource Conservation Recovery Act (RCRA), 42 U.S.C. §6901, *et seq.* A letter sent under separate cover from the Attorney General's Office will more thoroughly describe the history and terms of the settlement.

If approved by the Board of Public Works, MTA would enter into a Consent Agreement and Final Order with EPA that would resolve the violations MTA discovered, disclosed and corrected through an audit of MTA facilities required under an earlier settlement with EPA. Payment includes a cash penalty of two hundred and fifty thousand dollars ($250,000.00), and completion of a Supplemental Environmental Project (SEP) estimated to cost eight hundred thousand dollars ($800,000).

SUPPLEMENT B
DEPARTMENT OF BUDGET AND MANAGEMENT
ACTION AGENDA

REQUESTING AGENCY REMARKS: MDOT, MTA and the OAG recommend this requested settlement to avoid complex and costly litigation. In light of the cost of litigation and the disruption caused by litigation, the requested amount is economically reasonable.

If the proposed settlement is approved, a check in the amount of Thirty-Eight Thousand, Six-Hundred and Fourteen dollars ($38,614.00) payable to "Oil Spill Liability Trust Fund-311 Docket No. RCRA-CWA-CAA-03-2011-0041" and a check in the amount of Two-Hundred and Eleven Thousand, Three-Hundred and Eighty-Six dollars ($211,386) payable to "Treasurer, United States of America" will be drafted. Together these penalties comprise the total cash penalty of Two Hundred and Fifty Thousand dollars ($250,000). The cost associated with the SEP are incurred as the SEP is developed and implemented at the nine MTA facilities; therefore, the Eight Hundred Thousand, ($800,000) that under the agreement MTA must expend for the SEP is not due at this time but will be included in future agency appropriations. The checks for the cash penalties should be mailed to this office for delivery to the appropriate EPA office.

Board of Public Works Action - The above referenced Item was:

(APPROVED) DISAPPROVED DEFERRED WITHDRAWN

WITH DISCUSSION (WITHOUT DISCUSSION)

State of Maryland
Board of Public Works
80 Calvert Street
Annapolis, Maryland 21401
410-260-7335
Fax: 410-974-5240
Toll Free: 1-877-591-7320

August 10, 2011

Jamie Tomaszewski, BPW Agenda Manager
Division of Procurement Policy & Administration
Department of Budget & Management
45 Calvert Street
Annapolis, Maryland 21401

RE: Secretary's Agenda, Supplement B (1-S thru 11-S)

Dear Ms Tomaszewski:

The Board of Public Works, at its meeting of August 10, 2011, approved the Department of Budget & Management Agenda as submitted.

Sincerely,

Sheila C. McDonald

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

In the Matter of:	:
STATE OF MARYLAND, MARYLAND DEPARTMENT OF TRANSPORTATION, MARYLAND TRANSIT ADMINISTRATION, Respondent	: : : : : : : : : : DOCKET No. RCRA-CWA-CAA-03-2012-0038 : :

CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent by UPS, Next Day Delivery, a copy of the filed Consent Agreement and Final Order to the addressee listed below. The original and two copies of the same were hand-delivered to the Regional Hearing Clerk, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

Denise Ferguson, Principal Counsel
Maryland Department of Transportation
7201 Corporate Drive
Hanover, MD 21076

Dated: Jan 14, 2012

Joyce A. Howell