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REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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IN THE MATTER OF:

CSX Transportation, Inc.
500 Water Street
Jacksonville, Florida 32202

Respondent

Proceeding to Assess Class II
Administrative Penalty Under
Section 309(g) of the Clean Water Act,
33 U.S.C. § 1319(g)(2)(B)

Docket No. CWA-03-2015-0054

**CONSENT AGREEMENT
AND FINAL ORDER**

CONSENT AGREEMENT AND FINAL ORDER

**I. PRELIMINARY STATEMENT, JURISDICTIONAL AND STATUTORY
AUTHORITY**

1. This Consent Agreement and Final Order ("CAFO") is entered into by the Director, Water Protection Division, United States Environmental Protection Agency, Region III ("EPA" or "Complainant") and CSX Transportation, Inc. ("CSXT" or "Respondent") pursuant to Section 309(g) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits* ("Consolidated Rules"), 40 C.F.R. Part 22. The parties having agreed to settlement of alleged violations of the CWA by Respondent, this CAFO simultaneously commences and concludes this action pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) & (3). The authority to settle this matter has been delegated from the Administrator to the Regional Administrator of Region III of EPA.

2. Respondent is a Class 1 freight railroad transportation company, and is the owner or operator of rail yards and other transportation facilities in Maryland including Chesapeake Bay Piers (known since July 2011 as Curtis Bay Piers) located at 1910 Benhill Avenue in Baltimore, Maryland; Brunswick Yard located at 100 South Maple Avenue in Brunswick, Maryland; and Riverside Yard located at 1600 Ludlow Street in Baltimore, Maryland. Respondent has leased the Riverside Yard to the Maryland Transit Administration ("MTA") since June 15, 2013, and has licensed portions of the Brunswick Yard to the MTA since June 21, 2013. Chesapeake Bay Piers, Brunswick Yard and Riverside Yard are each referred to herein individually as a "Facility" and are referred to herein collectively as "Facilities."

3. The Maryland Department of the Environment (“MDE”) is authorized to issue permits for stormwater discharges associated with industrial activities in Maryland pursuant to the National Pollutant Discharge Elimination System (“NPDES”) program established under Section 402 of the CWA, 33 U.S.C. § 1342.

4. MDE has issued NPDES Permit No. MD0057371 for stormwater discharges at Chesapeake Bay Piers, NPDES Permit No. MD0000221 for stormwater discharges at Brunswick Yard and NPDES Permit No. MD0000264 for stormwater discharges at Riverside Yard. While Respondent is the permittee for NPDES Permit No. MD0057371, NPDES No. Permit MD0000221 and NPDES Permit No. MD0000264 were both transferred to MTA in June of 2013 and Respondent is no longer the permittee for either of those NPDES permits.

5. Complainant alleges that Respondent has failed to comply with certain specific requirements of the NPDES permits for the Facilities.

6. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as amended by the Debt Collection Improvement Act of 1996 (codified at 28 U.S.C. § 2461) and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, the Administrator of the EPA is authorized after March 15, 2004, to assess administrative penalties against any person who has violated a condition or limitation in an NPDES permit issued pursuant to Section 402 of the CWA in an amount not to exceed \$16,000 per day for each violation, up to a total civil penalty amount of \$177,500, for violations that occurred between January 12, 2009 and December 6, 2013.

II. ALLEGATIONS OF FACT AND CONCLUSIONS OF LAW

7. Section 402 of the CWA, 33 U.S.C. § 1342, establishes the NPDES program.

8. Under Section 402 of the CWA, 33 U.S.C. § 1342, EPA and states with EPA-approved NPDES programs are authorized to issue permits governing the “discharge of any pollutant, or combination of pollutants” from regulated sources.

9. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), generally prohibits the discharge of any pollutant from any point source by a person into a water of the United States except in compliance with a permit issued under the NPDES program pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

10. Section 502(5) of the CWA, 33 U.S.C. § 1362(5) defines the term “person” as “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.”

11. Section 502(12) of the CWA, 33 U.S.C. § 1362(12) defines the term “discharge of a pollutant” and the term “discharge of pollutants” as “any addition of any pollutant to navigable waters from any point source,” or “any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.”

12. Section 502(6) of the CWA, 33 U.S.C. § 1362(6) defines the term “pollutant” in relevant part as “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.”

13. Section 502(14) of the CWA, 33 U.S.C. § 1362(14) defines the term “point source” in relevant part as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.”

14. Section 502(7) of the CWA, 33 U.S.C. § 1362(7) defines the term “navigable waters” as “the waters of the United States, including the territorial seas.” *See also* 40 C.F.R. § 122.2 (defining “Waters of the United States”).

15. Pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), EPA has authorized MDE to administer the NPDES program in the State of Maryland.

16. An NPDES permit is required for stormwater discharges associated with industrial activity, including stormwater discharges from transportation facilities to the extent that such facilities have vehicle maintenance shops, equipment cleaning operations or airport deicing operations and the stormwater discharges are from such shops or operations. *See* 33 U.S.C. § 1342, 40 C.F.R. § 122.26(b)(14).

17. Respondent is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

18. Pursuant to its NPDES permits, Respondent is authorized to discharge pollutants through point sources into navigable waters.

Count I - Chesapeake Bay Piers

19. Respondent owns and/or operates the facility formerly known as Chesapeake Bay Piers and identified since July 2011 as Curtis Bay Piers. (For purposes of this CAFO, the Facility is generally referred to as Chesapeake Bay Piers.)

20. On April 28, 2011, representatives of EPA and MDE conducted an inspection to evaluate the wastewater and stormwater monitoring practices at the Facility.

21. At the time of the inspection, the Facility was operating under administratively-extended NPDES Permit No. MD0057371, issued by MDE and effective on July 1, 2005, with an expiration date of June 30, 2010. (MDE subsequently reissued NPDES Permit No. MD0057371 effective as of November 1, 2013.)

22. Section I.S.2.b.ii of the 2005 NPDES permit for the Facility requires Respondent to identify and implement stormwater management controls appropriate for the Facility that address “[g]ood housekeeping that requires the maintenance of a clean, orderly facility.”

23. EPA asserts that Respondent failed to maintain “good housekeeping” conditions in violation of the NPDES permit for the Facility at the time of the inspection on April 28, 2011. Specifically, EPA asserts that the EPA inspector observed coal dust on the piers immediately adjacent to the coal loading system, beneath the conveyor system, and in and around stormwater inlets which discharge directly into Curtis Bay, and observed iron ore pellets to be present at the pier where iron ore pellets are unloaded while the ore pier was inactive.

Count II - Brunswick Yard

24. Respondent owns and operates a portion of the facility known as the Brunswick Yard.

25. On May 21, 2012, EPA conducted an inspection at the Facility.

26. At the time of inspection on May 21, 2012, the Facility was operating under NPDES Permit No. MD0000221, issued by MDE, and effective on December 1, 2009, with an expiration date of November 30, 2014. NPDES Permit No. MD0000221 was subsequently transferred to MTA effective as of June 1, 2013.

27. Table 2-4 of the SWPPP for the Facility prepared pursuant to NPDES Permit No. MD0000221 states that among the various management practices to be followed, “[d]umpsters utilized throughout the facility are typically closed top and/or covered to prevent contact with storm water.”

28. EPA asserts that Respondent failed to comply with the SWPPP in violation of the NPDES Permit for the Facility because, at the time of the inspection on May 21, 2012, the EPA inspector observed that certain trash hoppers at the Facility were not covered as required by the SWPPP.

Count III - Riverside Yard

29. Respondent owns and formerly operated the facility known as the Riverside Yard.

30. As of March 17, 2011, the Facility was operating under administratively-extended NPDES Permit No. MD0000264, issued by MDE and effective September 1, 2004, with an expiration date of August 31, 2009. MDE subsequently reissued NPDES Permit No. MD0000264 effective as of August 1, 2011, and the NPDES permit was transferred to MTA effective as of June 1, 2013.

31. NPDES Permit No. MD000264 contains requirements to sample stormwater discharges if sufficient precipitation occurs to cause an emergency overflow of stormwater from a storage impoundment at the Riverside Yard to the Patapsco River.

32. On March 17, 2011, an emergency overflow of stormwater occurred from the storage impoundment but the discharge had ceased by the time a CSXT contractor arrived at the facility and sampling activities commenced, thereby precluding collection of a sample of stormwater in accordance with NPDES Permit No. MD000264.

III. SETTLEMENT

33. EPA has determined that Respondent has violated the NPDES permits for the Facilities as described in Paragraphs 23, 28 and 32, above.

34. In full and final settlement and resolution of all allegations contained in foregoing Allegations of Fact and Conclusions of Law, and in full satisfaction of all civil penalty claims pursuant thereto, Respondent agrees to pay a civil penalty in the amount of forty-five thousand dollars (\$45,000) in accordance with the terms of and in the manner described in Paragraphs 42 through 46, below. This civil penalty does not constitute a demand as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.

35. EPA has assessed the civil penalty in Paragraph 34, above, pursuant to its authority under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B). EPA has determined the civil penalty amount set forth in Paragraph 34, above, after taking into account the factors listed in Section 309(g) of the CWA, 33 U.S.C. § 1319(g), including but not limited to the nature, circumstances, extent and gravity of the violations, and, with respect to the Respondent, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

36. Respondent consents to issuance of this CAFO and agrees to undertake all actions required by its terms and conditions. Respondent consents to the assessment of the civil penalty herein as set forth in Paragraph 34, above.

37. This CAFO addresses and settles all civil and administrative claims for alleged violations of the CWA identified in this CAFO.

38. Each party to this action shall pay its own costs and attorney fees.

39. The provisions of this CAFO shall be binding upon Complainant, the Respondent, and Respondent's officers, principals, directors, successors and assigns.

40. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.

41. Pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment regarding this CAFO before issuing the Final Order. In addition, EPA has consulted with the state of Maryland regarding this action, and will mail a copy of this document to the appropriate Maryland officials.

IV. PAYMENT TERMS

42. Within thirty (30) days after the effective date of this CAFO, Respondent shall pay a civil penalty of forty-five thousand dollars (\$45,000) for the violations cited herein. The civil penalty payment shall be made in accordance with the following requirements:

a. The payment shall reference Respondent's name, address and docket number of this CAFO, and shall be made in U.S. dollars by money order, corporate check, cashier's or certified check made payable to the "Treasurer, United States of America", wire transfer, ACH, or on line, and delivered as follows:

i. If by money order, corporate check, cashier's check or certified check sent by U.S. postal service mail:

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

Contact: Bryson Lehman 513-487-2123

ii. If by money order, corporate check, cashier's check or certified check sent by private commercial overnight delivery service:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL MO C2 GL
St. Louis, MO 63101

Contact: 314-418-1028

iii. 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

iv. If by electronic wire transfer:

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"

v. If by ACH (also known as REX or remittance express):

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 Checking

Physical location of U.S. Treasury facility:

5700 Rivertech Court
Riverdale, MD 20737
Contact: Jesse White 301 887 6548
or REX, 1 866 234 5681

vi. On Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

vii. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

b. A copy of the check or money order or other proof of payment submitted in fulfillment of the penalty payment requirements of this CAFO shall be sent to the following:

U.S. Environmental Protection Agency
Regional Hearing Clerk (3RC00)
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

and

Mr. Andrew Duchovnay (3RC20)
Senior Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

c. A transmittal message identifying the case name and docket number identified above shall accompany the remittance and copies of the check or transfer instrument.

43. Failure to pay the civil penalty assessed by this CAFO within thirty (30) days after its effective date may subject the Respondent to a collection action under Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9). The validity, amount and appropriateness of the civil penalty are not subject to review in a collection proceeding. *See* 15 U.S.C. § 2615(a)(4)(A).

44. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest on unpaid penalties, and a charge to cover the cost of processing and handling a delinquent claim. Interest will begin to

accrue on this civil penalty if it is not paid within fifteen days after the date due. Interest will be assessed at the rate of the United States Treasury tax and loan rate. 40 C.F.R. § 13.11. In addition, a quarterly nonpayment penalty charge may be assessed on any delinquent debt pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9). In addition, EPA will assess a \$15.00 administrative handling charge for administrative costs incurred during the first 30-day period after the payment is due and an additional \$15.00 for each subsequent 30 days the penalty remains due.

45. Failure by Respondent to pay the civil penalty assessed by EPA in this CAFO may subject Respondent to an administrative penalty of not more than \$16,000 for each day of violation up to a maximum penalty of \$177,500, and/or a civil action in a United States district court with penalties up to \$37,500 per day of violation as authorized in the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

46. The civil penalty assessed by EPA in this CAFO shall not be deductible for purposes of Federal taxes.

V. GENERAL PROVISIONS

47. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.

48. Respondent agrees not to contest EPA's jurisdiction to issue this CAFO and not to contest EPA's jurisdiction to enforce the terms of this CAFO.

49. EPA and Respondent expressly acknowledge that Paragraph 47, above, shall not constitute an admission as to any matter other than as necessary for establishing EPA's jurisdiction in this proceeding, and is neither intended nor shall be construed as an admission that may be relied upon for any purpose by any person not a party to this proceeding.

50. Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in this CAFO, except as provided in Paragraph 47, above.

51. For purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing, pursuant to Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), on any issue of law or fact set forth in this CAFO and consents to issuance of this CAFO without adjudication, and waives its right to appeal this final order pursuant to Section 309(g)(8)(A), 33 U.S.C. § 1319(g)(8)(A).

52. The person signing this CAFO on behalf of Respondent asserts that as of the date of executing this CAFO, Respondent is in material compliance with NPDES Permit No. MD0057371 for Chesapeake Bay Piers.

53. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local laws and ordinances, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. This CAFO does not constitute a waiver, suspension or modification of the requirements of the CWA.

54. This CAFO resolves only the civil claims for the specific violations of the CWA alleged herein. 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 settlement 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 the CWA, 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. Respondent fully reserves its rights to contest, challenge and/or defend against any subsequent action(s) taken by EPA against or involving Respondent. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local laws and ordinances, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. This CAFO does not constitute a waiver, suspension or modification of the requirements of the CWA.

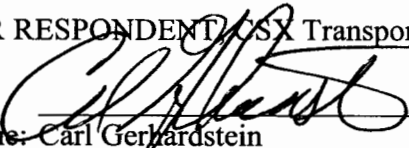
55. By his signature, the undersigned representative of Respondent certifies that he is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

56. This CAFO constitutes 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 CAFO.

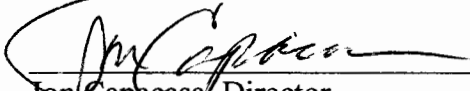
VI. EFFECTIVE DATE

57. This CAFO 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.

FOR RESPONDENT, CSX Transportation, Inc.:

By: 
Name: Carl Gerhardstein
Title: Assistant Vice President,
Public Safety, Health & Environment

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



Jon Capraesa, Director
Water Protection Division

Date: 7/8/2015

In Re: CSX Transportation, Inc.
Docket No. CWA-03-2015-0054

CERTIFICATE OF SERVICE


I certify that on this date I caused to be sent by first class mail a copy of this "Consent Agreement and Final Order," to the following persons:

Michael M. Meloy, Esq.
Manko, Gold, Katcher & Fox
401 City Avenue
Bala Cynwyd, PA 19004

and a copy delivered by hand to:

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

Date: 8/8/15


Andrew Duchovnay
Sr. Asst. Regional Counsel