

IN THE MATTER OF: CSX TRANSPORTATION, INC.	BEFORE THE MARYLAND DEPARTMENT OF THE ENVIRONMENT
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SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between the Maryland Department of the Environment (“Department”) and CSX Transportation, Inc. (“CSXT”), with regard to certain alleged violations of Maryland laws and regulations concerning the control of air pollution, as asserted by the Department against CSXT.

WHEREAS, the Department is charged with the responsibility for regulating air pollution in the State of Maryland and enforcing State air pollution control laws and regulations, as set forth in § 1-401 and §§ 2-101 through 2-1211 of the Environment Article of the Maryland Code, and its implementing regulations, found in Title 26 Chapter 11 of the Code of Maryland Regulations (COMAR); and

WHEREAS, CSXT is a corporation formed under the laws of Virginia; and

WHEREAS, CSXT owns and operates a material storage, transfer, and shipment terminal located at 1910 Benhill Avenue, Baltimore City, Maryland 21226 (“Facility”); and

WHEREAS, on October 1, 2018, the Department issued to CSXT State Permit to Operate No. 510-2263 (“Operating Permit”), governing operations at the Facility which cause emissions into the ambient atmosphere; and

WHEREAS, Part C, Condition No. 1 of the Operating Permit requires that CSXT maintain and operate all installations and associated air pollution control equipment so as to assure compliance with all applicable air pollution control regulations and permit conditions.

ALLEGED VIOLATIONS

WHEREAS, on December 30, 2021, at 11:24 a.m., an explosive incident occurred in the North Reclaim Tunnel of the Facility (hereinafter, “Incident”), damaging the North Reclaim Tunnel conveyor and tunnel structure; and

WHEREAS, as a result of the Incident, CO₂, CO, NO_x, VOC, and SO₂ were discharged into the atmosphere; and

WHEREAS, the Department alleges that CSXT has violated Title 2 of the Environment Article, Annotated Code of Maryland, and COMAR 26.11.02.05 by discharging pollutants to the ambient atmosphere during the Incident without authorization under the Facility’s Permit to Operate issued pursuant to COMAR 26.11.02.02; and

WHEREAS, the Department alleges that CSXT has violated Title 2 of the Environment Article, Annotated Code of Maryland, and COMAR 26.11.06.02C(2), by causing or permitting the discharge of emissions from an installation that were visible to human observers during the Incident; and

WHEREAS, the Department alleges that CSXT has violated Title 2 of the Environment Article, Annotated Code of Maryland, and COMAR 26.11.06.03 by causing or permitting the discharge of emissions without taking reasonable precautions to prevent

particulate matter from becoming airborne, contributing to conditions leading to the Incident; and

WHEREAS, the Department alleges that CSXT has violated Title 2 of the Environment Article, Annotated Code of Maryland, and COMAR 26.11.06.08 by operating or maintaining an installation or premises in such a manner that a nuisance or air pollution was created in conjunction with the Incident; and

WHEREAS, the Department alleges that CSXT has violated Title 2 of the Environment Article, Annotated Code of Maryland, and COMAR 26.11.06.09 by causing or permitting the discharge into the atmosphere of gases, vapors, or odors beyond the Facility's property line in such a manner that a nuisance or air pollution was created in conjunction with the Incident; and

WHEREAS, prior to the effective date of this Agreement, CSXT has taken corrective actions to prevent a recurrence of the forgoing alleged violations as described within this Agreement (hereinafter, "Alleged Violations") and made physical and operational changes which reduce their chance of recurrence; and

WHEREAS, the Parties acknowledge that further investigation must take place to determine the best means to address any fugitive dust emissions that may occur along the western fence line of the Facility, focusing principally, but not exclusively, on the area along the western fence line that is immediately adjacent to the separation between the two Amazon warehouse buildings along Curtis Avenue at Church Street; and

WHEREAS, the Department and CSXT agree that resolution of the Department's claims for the Alleged Violations without further delay or litigation is in the best interests of the Parties and in the public interest; and

WHEREAS, CSXT denies the factual and legal assertions in the Alleged Violations; and

WHEREAS, it is expressly understood that this Agreement is intended to fully resolve any civil liability which the Department may have against CSXT for the Alleged Violations, that this Agreement pertains only to the civil violations of the State's environmental laws and regulations described herein, that the Department has made no promises or representations other than those contained in this Agreement and that no other promises or representations will be made unless in writing, and that the Department has no authority over any criminal actions.

NOW THEREFORE, without any admission of the Alleged Violations by CSXT and in full settlement thereof, the Department and CSXT, hereby **AGREE** to the following terms and conditions:

PENALTY

1. CSXT shall pay to the Department a civil penalty in the amount of **Fifteen Thousand Dollars (\$15,000.00)**. Payment shall be made no later than thirty (30) days following receipt of an invoice from the Department. Payment shall be by check made payable to the "Maryland Department of the Environment/Clean Air Fund" and mailed to the Maryland Department of the Environment, P.O. Box 2037, Baltimore, Maryland 21203-2037.

SUPPLEMENTAL ENVIRONMENTAL PROJECT

2. Within ninety (90) days of execution of this Agreement, or within any time extension granted in writing by the Department at its discretion, CSXT shall pay One-Hundred Thousand Dollars (\$100,000.00) to the South Baltimore Community Land

Trust Inc. (“SBCLT”) to support implementation of a supplemental environmental project (“SEP”) designed to serve people, organizations, or communities in the vicinity of CSXT, including the community of Curtis Bay in Baltimore City, Maryland. No later than thirty (30) days following its payment to SBCLT, CSXT shall submit to the Department a written notice and documentation confirming that payment was made.

3. Notwithstanding CSXT’s obligation to make the payment described in Paragraph 2, the parties agree that this Agreement does not create any obligation on the part of CSXT to ensure implementation of the SEP. Rather, proper performance of the SEP shall be the sole responsibility of the funding recipient, who shall guarantee performance of the SEP in accordance with the Guarantee Agreement attached as Addendum A and incorporated herein by reference.

4. Any statement, publication, or other material published or distributed by CSXT or on CSXT’s behalf referencing the SEP shall include a statement that “this project was required in settlement of an enforcement action by the State of Maryland.”

CORRECTIVE ACTION

5. CSXT shall, as soon as reasonably practicable, but not later than July 1, 2023, perform updates to the South Reclaim Tunnel, to the extent not already completed, to match all updates and corrective measures made in the North Reclaim Tunnel following the Incident. These updates include, but are not limited to, 1) improved tunnel airflow beyond a level prior to the Incident, to be maintained at a minimum of 300 feet per minute (fpm) during operation of the conveyor; 2) installation and operation of a fixed gas detection system inside the South Reclaim Tunnel to monitor for methane; and

3) installation of metal skirting panels around the conveyor and water sprays within the South Reclaim Tunnel.

6. CSXT shall, within 90 days, coordinate with the Baltimore City Fire Department and Baltimore City Office of Emergency Management to initiate discussions to improve emergency response and notification procedures and obtain regular training opportunities for its staff to carry out such procedures.

RELEASE

7. By this Agreement, performance of the actions described in Paragraphs 1 through 6 will release, resolve, and settle any civil penalty claims against CSXT, and its past or present officers, directors, agents, employees, representatives, predecessors, affiliates, parent or subsidiary companies, and successors or assigns, that the Department may have under Title 2 of the Environment Article, its implementing regulations, and/or the Facility's Permit to Operate for the Alleged Violations relating to the Incident that occurred at the Facility on December 30, 2021.

8. Other than the Department's release in Paragraph 7 of this Agreement, nothing herein shall be deemed to be a waiver of the Department's right to proceed in an administrative or civil action for violation of any statute, regulation, permit, or order by CSXT, nor shall anything set forth in this Agreement be deemed to be a waiver of CSXT's right to contest such actions by the Department.

9. Other than the Department's release in Paragraph 7 of this Agreement, nothing herein shall be construed to limit any authority of the Department to issue orders, enforce applicable permits, seek injunctive relief, or take any other action it deems

necessary to protect the public health or safety, or to limit any other authority the Department now has or may hereafter be delegated.

EFFECT OF AGREEMENT

10. Neither CSXT's execution of this Agreement nor payment pursuant to Paragraphs 1 and 2 shall constitute an admission of the facts alleged or violations of law asserted in this Agreement, an adjudication of liability or fact with regard to the Alleged Violations, all of which CSXT disputes, or a waiver of defenses by CSXT in any subsequent enforcement action.

11. Nothing in this Agreement shall be construed to alter CSXT's obligation to comply with all applicable federal, State, or local statutes, regulations, or permits.

12. Nothing in this Agreement creates any rights in persons other than the Department and CSXT.

13. The terms of this Agreement are binding on the Department and CSXT and shall be enforceable in the Maryland courts. In the event that CSXT fails to timely perform any of the actions required under this Agreement, the Department may institute an action to enforce this Agreement against CSXT. In such action, this Agreement shall be governed by and interpreted under the laws of the State of Maryland.

14. The terms of this Agreement are contractual and not mere recitals. This Agreement may be modified only in writing signed by both the Department and CSXT.

15. This Agreement has been negotiated freely by the Department and CSXT and shall in all cases be construed as a whole, according to its fair meaning and not strictly for or against the Department or CSXT.

16. This Agreement constitutes the entire agreement between the Department and CSXT settling the Alleged Violations. No other prior or contemporaneous written or oral agreement, action, or statement regarding the matters described herein shall be valid or have any bearing on the interpretation, application, or enforcement of the Agreement.

17. The effective date of this Agreement shall be the date upon which the Department countersigns the Agreement.

18. CSXT acknowledges that the payment described in Paragraph 1 constitutes a civil penalty arising from a State enforcement action, and is for the benefit of a governmental unit. Pursuant to 11 U.S.C. § 523(a)(7), this civil penalty is not dischargeable in any bankruptcy proceedings. CSXT shall provide written notice to the Department prior to the filing of any petition or the commencement of any proceeding arising under Bankruptcy Code, 11 U.S.C. §§ 101 through 1532.

19. The Parties recognize and acknowledge that the Department is required to report certain fines, penalties, and other amounts to the United States Internal Revenue Service pursuant to 26 U.S.C. § 6050X. CSXT agrees to cooperate with the Department in meeting its reporting obligations, to promptly provide information requested by the Department, and to complete the Information Form attached hereto as Addendum B. Payments under Paragraph 1 and Paragraph 2 of this Agreement are penalties within the meaning of Section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), and 26 C.F.R. § 1.162-21(a)(3)(i), and CSXT shall not deduct any penalties paid thereunder in calculating their federal income tax. For the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R.

§ 1.162-21(b)(2)(iii)(A), performance under Paragraph 5 is restitution, remediation, or required to come into compliance with the law.

20. If any provision or authority of this Agreement or the application of this Agreement to any party or circumstance is held by any judicial or administrative authority to be invalid, the application of such provision or authority to the party or circumstance shall be null and void and the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect.

SALES OR TRANSFERS OF OWNERSHIP INTEREST

21. The provisions of this Agreement shall apply and be binding on CSXT and its successors and assigns, including any transferee of any legal or equitable interest in the Facility, except for a lender or lenders taking a security interest in the equipment at the Facility, provided such lender or lenders exercise no operational or other control over the Facility. Prior to the transfer of such legal or equitable interest in the Facility, CSXT shall provide a copy of this Agreement to the prospective successor-in-interest. CSXT shall provide the Department with documentation satisfactory to the Department demonstrating its compliance with the provisions of this Paragraph upon consummation of the transaction.

22. Any agreement for the transfer of the Facility shall provide that the transferee shall comply fully with the terms of this Agreement and that the Department may enforce the terms of this Agreement against the transferee. CSXT agrees that within twenty (20) business days following the consummation of any agreement for the transfer of the Facility, CSXT will provide the Department with documentation satisfactory to the

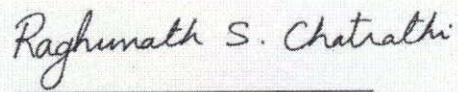
Department demonstrating its compliance with the provisions of this Paragraph upon consummation of the transaction.

23. Upon completion and satisfaction of the obligations described in Paragraphs 1 through 6 of this Agreement, CSXT's obligations under Paragraphs 21 and 22 shall be terminated and shall no longer be considered an enforceable requirement.

12/22/2022

Date

FOR CSXT:

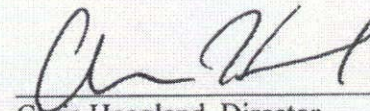


Raghu Chatrathi, Senior Director
Public Safety, Health and Environment
CSX Transportation, Inc.

12/22/22

Date

FOR THE MARYLAND DEPARTMENT
OF THE ENVIRONMENT:



Chris Hoagland, Director
Air and Radiation Management
Administration
Maryland Department of the Environment

Approved this 23rd day of December,
2022, as to form and legal sufficiency.



Doris N. Weil
Assistant Attorney General

Addendum A to Settlement Agreement Between Maryland Department of the Environment and CSX Transportation, Inc.

Guarantee Agreement Between Maryland Department of the Environment and the South Baltimore Community Land Trust

THIS GUARANTEE AGREEMENT is made this 23rd day of Dec. 2022 by and between the Maryland Department of the Environment and South Baltimore Community Land Trust Inc. (“SBCLT”) with a principal office located at 10 16th Avenue #19762, Brooklyn, MD 21225 and a resident agent address located at 1123 Monroe Circle, Baltimore, MD 21225 (collectively, the “Parties”).

WHEREAS, the Air and Radiation Administration of the Maryland Department of the Environment (“the Department”) is charged with regulating air pollution in the State of Maryland and enforcing State air pollution control laws and regulations. The Department’s authority is set forth in § 1-401 and §§ 2-101 through 2-1211 of the Environment Article of the Maryland Code, and its implementing regulations, found in Title 26 Chapter 11 of the Code of Maryland Regulations; and

WHEREAS, on or about July 27, 2022, the Department initiated settlement discussions with CSX Transportation, Inc. (“CSXT”) regarding alleged violations of CSXT’s air permit to operate and the Department’s regulations at its material storage, transfer, and shipment terminal located at 1910 Benhill Avenue in Baltimore City, Maryland; and

WHEREAS, the Department and CSXT have reached a settlement in principle which will require CSXT, in part, to pay one-hundred thousand dollars (\$100,000.00) to support the implementation of a supplemental environmental project (“SEP”) designed to serve people, organizations, or communities in the vicinity of CSXT, including the community of Curtis Bay in Baltimore City, Maryland (“SEP Payment”); and

WHEREAS, the Department has identified SBCLT as a recipient of the funding to be provided under the Department's settlement, for the explicit purpose of the community-led redevelopment of the property at 1601 Locust Street, Baltimore, MD 21226, into an energy efficient building to serve as a South Baltimore community center for environmental education, research, and training activities in partnership with the Community of Curtis Bay Association, Inc.;

and

WHEREAS, the Department approves payment from designated SEP funds to the appropriate third-party licensed professionals to develop architectural designs, engage in planning and engineering, perform stabilization, and perform rehabilitation and construction for the explicit purpose of redeveloping the property located at 1601 Locust Street, and/or the purchase of fixtures and other improvements related thereto for the explicit purpose of redevelopment of the property at 1601 Locust Street into an energy efficient building that is intended to be all-electric; and

WHEREAS, the Department approves the purchase and maintenance of an electric van and associated costs, intended to provide emission-free transportation options for the community, including in support of the environmental education program, thereby reducing air emissions which can negatively impact the community; and

WHEREAS, in exchange for acting as recipient of that funding, SBCLT enters into this Guarantee Agreement to provide the Department with an enforceable contractual agreement guaranteeing implementation of the Project, including certain minimum deliverables to be provided under the terms described herein.

NOW THEREFORE, in consideration of the mutual promises noted above, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by

SBCLT and the Department, the Parties agree that, upon receipt of the SEP Payment, SBCLT shall be obligated to do as follows:

1. Promptly after receiving the SEP Payment, SBCLT agrees to deposit the payment in an account dedicated to the redevelopment of the property at 1601 Locust Street into an energy efficient building and/or the purchase and maintenance of an electric van and associated costs (the “Dedicated Account”). The Dedicated Account shall be solely for uses related to redevelopment of the property at 1601 Locust Street into an energy efficient building and/or the purchase and maintenance of an electric van and associated costs and shall not be commingled with any other funds, including but not limited to funds for other activities or general operations of SBCLT.

2. Within thirty (30) days of receipt of the SEP Payment, SBCLT shall provide the Department written confirmation that the Dedicated Account has been established and the SEP Payment has been deposited into the Dedicated Account.

3. SBCLT shall expend no less than \$100,000.00 of the SEP Payment funds in support of (1) its redevelopment of the property at 1601 Locust Street into an energy efficient building that is intended to be all electric that will serve as a South Baltimore community center for environmental education, research, and training activities; which expenses may include: (a) payment to the appropriate third-party licensed professionals to develop architectural designs, engage in planning and engineering, perform stabilization, and perform rehabilitation and construction for the explicit purpose of redeveloping the property located at 1601 Locust Street, and/or (b) the purchase of fixtures and other improvements related thereto for the explicit purpose of redevelopment of the property at 1601 Locust Street into an energy efficient building intended to be all-electric; and/or (2) the purchase of an electric van, a charging station, and associated vehicle costs to be used to provide emissions-free transportation for students of the Towson

University Department of Sociology and Anthropology-Ben Franklin High School environmental education program, among other Ben Franklin High School and community transportation needs. SBCLT shall expend these costs within three years of receipt of the SEP Payment, unless an extension is approved in writing by the Department. SBCLT will remit to the Department any unexpended or unencumbered funds associated with the SEP Payment from the Dedicated Account at the end of the three-year implementation period unless the Department extends the three-year period.

4. SBCLT shall submit to the Department program finance and expenditure reports on a semiannual basis within thirty (30) days following the end of each half of the calendar year. The first report under this Paragraph shall be required at the end of the first half calendar year following receipt of the SEP Payment, with the requirement to submit semiannual reports continuing until at least \$100,000.00 in funding has been expended.

5. In addition to the requirement of Paragraph 4, SBCLT shall submit to the Department by February 1 of each year, an annual report that is narrative in nature describing the previous year's activities and the ways in which these activities served Curtis Bay and the surrounding community. A final report will be provided within forty-five (45) days after the \$100,000.00 has been expended.

6. SBCLT shall submit to the Department for its approval the following expenditures before incurring the expense: Any expenditure in excess of \$5,000.00 pursuant to a service contract, the purchase of aggregated equipment, or any item purchased that costs in excess of \$7,500.00. Any expenditure listed in this paragraph which is not approved in advance, or which fails to receive subsequent approval by the Department, shall either be reimbursed by SBCLT to the Dedicated Fund or returned to the Department, at the Department's discretion.

7. In order to receive expenditure approval pursuant to Paragraph 6, an individual or entity that is providing professional services such as architectural, planning, and engineering services shall, at a minimum, possess the appropriate expertise on the work being performed, and hold the appropriate professional license for performing such work.

8. The Department will respond to requests for approval pursuant to Paragraph 6 as soon as reasonably possible but in no event later than 15 days after SBCLT submits the request.

9. The Department will be allowed to audit the Dedicated Account and the documentation for any expenditure drawn against that account, including any documentation regarding the appropriate expertise a person possesses.

10. Any funds associated with the SEP Payment not used in accordance with this Agreement as determined by the Department will be returned to the Department upon demand.

11. Any notifications or reports required under this Agreement shall be sent via email to:

Deputy Director
Maryland Department of the Environment
Air & Radiation Administration
1800 Washington Blvd, Suite 710
Baltimore, MD 21230-1720
angelo.bianca@maryland.gov

12. The terms of this Guarantee Agreement are contractual and not mere recitals. This Guarantee Agreement contains the entire agreement of the Parties and shall not be modified by any prior oral or written agreement, representation, or understanding. No modification or termination of this Guarantee Agreement, or any part thereof, shall be valid except by written amendment executed by the Department and SBCLT.

13. The terms of this Guarantee Agreement are binding on the parties and shall be enforceable in Maryland courts. This Guarantee Agreement shall be governed by and interpreted under the laws of the State of Maryland.

14. This Guarantee Agreement shall not be construed to create any rights in persons other than the Department and SBCLT.

15. It is the intent of the parties that the provisions of this Guarantee Agreement are severable and that, should any provision be declared by a court of law to be invalid or unenforceable, the other provisions shall remain in effect to the maximum extent reasonable.

16. This Guarantee Agreement has been freely negotiated by the Department and SBCLT and shall in all cases be construed as a whole, according to its fair meaning and not strictly for or against the Department or SBCLT.

17. This Guarantee Agreement shall be deemed effective as of the date the last party signs the Guarantee Agreement. This Guarantee Agreement may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same instrument. For the purposes of this Guarantee Agreement, signatures delivered by facsimile or other electronic means shall be as binding as originals upon the parties so signing.

As confirmed by the signatures below, the Parties agree and consent to the terms and conditions of this Guarantee Agreement.

12/22/22
Date


FOR THE MARYLAND DEPARTMENT OF THE ENVIRONMENT:


Chris Hoagland, Director
Air and Radiation Management Administration


Maryland Department of the Environment

FOR THE SOUTH BALTIMORE COMMUNITY
LAND TRUST, INC.:

December 23, 2022
Date


Dr. Melery Thomas, PhD, Executive Director
South Baltimore Community Land Trust, Inc.

Approved this 23rd day of December,
2022, as to form and legal sufficiency.


Doris N. Weil
Assistant Attorney General

Addendum B to Settlement Agreement Between Maryland Department of the Environment and CSX Transportation, Inc.

Information Form

Settling Party's Information:

Full Legal Name: _____

Tax ID Number: _____

Address: _____

City: _____ State: _____

Zip Code: _____ Phone: _____

Court & Case Information:

Court/Jurisdiction: _____

Case Name/Caption: _____

Case Number: _____

Settlement Terms:¹

Amount to be paid as a penalty: _____

Cost of remediation or restitution: _____

Cost for compliance: _____

Total: _____

Date

Signature

Title: _____

¹ If these amounts are not specified in the settlement agreement, provide your best estimate based upon the information available to you at this time. You will report your actual expenditures on your tax returns.