IN THE CIRCUIT COURT FOR BALTIMORE CITY

MARYLAND DEPARTMENT OF THE ENVIRONMENT
1800 Washington Boulevard
Baltimore, Maryland 21230

Plaintiff,

v.

CURTIS BAY ENERGY, LP
3200 Hawkins Point Road
Baltimore, Maryland 21550

Defendant.

SERVE ON:
CSC-Lawyers Incorporating Service Company
7 St Paul Street, Suite 820
Baltimore, MD 21202

Civil Case No.

2020 MAR 17 PM 10:00

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COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

The Maryland Department of the Environment ("Department" or "MDE"), by undersigned counsel, files this complaint against defendant, Curtis Bay Energy, LP ("CBE") and alleges:

PRELIMINARY STATEMENT

1. In an effort to protect the public health and to prevent the pollution of the ambient air caused by the emissions of unpermitted pollutants, the Department

brings this civil action to address violations of the State's air quality control laws, as provided in Title 2 of the Environment Article, Annotated Code of Maryland, and Title 26, Subtitle 11 of the Code of Maryland Regulations ("COMAR"). These violations have occurred and continue to occur at CBE's medical waste incinerator located at 3200 Hawkins Point Road, Baltimore, Maryland 21226 (the "Facility").

2. The Facility is the largest special medical waste incinerator in the United States. The Facility combusts hospital, medical, and infectious waste from in-State and out-of-State sources, which in turn creates air pollutants including particulate matter, carbon monoxide, dioxins/furans, hydrogen chloride, sulfur dioxide, nitrogen oxides, lead, cadmium, and mercury. The Facility is regulated under applicable federal Clean Air Act and Maryland regulations and must comply with specific emissions limits and monitoring requirements.

3. The Department brings this action because the Facility repeatedly exceeded its emissions limits for carbon monoxide and hydrogen chloride (a toxic air pollutant), exceeded visible emissions limits (a surrogate for particulate matter), caused the release of uncontrolled and unpermitted incineration gases, failed a stack test to demonstrate compliance with its particulate matter limits, used a continuous emissions monitor that was recording invalid data, and otherwise failed to comply with its air quality operating permit. Accordingly, the Department seeks injunctive relief to require CBE to make necessary repairs and perform necessary maintenance

to prevent future permit violations at the Facility, as well as civil penalties pursuant to §§ 2-609 and 2-610 of the Environment Article.

JURISDICTION AND VENUE

4. Jurisdiction lies in this Court pursuant to § 1-501, § 6-102, and § 6-103 of the Courts and Judicial Proceedings Article, Annotated Code of Maryland because CBE is organized under the laws of Maryland, maintains its principal place of business in Maryland, and regularly conducts business in Maryland.

5. Venue lies in this Court pursuant to § 6-201(a) of the Courts and Judicial Proceedings Article because CBE carries on a regular business in Baltimore City, Maryland.

6. The Department is authorized to bring this civil action seeking a civil penalty and injunctive relief pursuant to § 2-609 and § 2-610(a) of the Environment Article.

PARTIES

7. The Department is an agency within the Executive Branch of the State of Maryland that is charged with responsibility of protecting public health and the environment by implementing and enforcing the State's laws governing air pollution set forth in Title 2 of the Environment Article and Title 26, Subtitle 11 of COMAR.

8. CBE is a limited partnership formed and organized under the laws of Maryland, with a principal place of business at 3200 Hawkins Point Road, Baltimore, Maryland 21226, and which owns and operates the Facility.

STATUTORY AND REGULATORY AUTHORITY

A. Federal New Source Performance Standards and Emission Guidelines for Existing Hospital Medical Infectious Waste Incineration Units

9. Under the federal Clean Air Act, 42 U.S.C. § 7401 through § 7671q ("the Act" or "CAA"), federal and state governments act in partnership to battle air pollution. To that end, § 111 of the CAA requires states to adopt rules to implement the New Source Performance Standards for new sources and Emissions Guidelines for existing sources that the U.S. Environmental Protection Agency ("EPA") establishes for certain categories of sources and air pollutants. 42 U.S.C. § 7411

10. Additionally, and of relevance to this matter, § 129 of the CAA, entitled "Solid Waste Combustion," specifically requires EPA to develop New Source Performance Standards and Emission Guidelines for "each category of solid waste incineration units" pursuant to section 111 and 129 of the Clean Air Act. 42 U.S.C. § 7429. Sections 111(d) and 129(b) of the CAA address emissions from existing incinerators. 42 U.S.C. § 7411(d); U.S.C. § 7429(b).

11. The New Source Performance Standards and Emissions Guidelines are codified in 40 CFR part 60, Subpart Ec, "Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is

Commenced After June 20, 1996" and 40 CFR part 60, Subpart Ce, "Emissions Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators [HMIWI]," respectively.

12. A hospital/medical/infectious waste incinerator ("HMIWI" or "HMIWI unit") means any device that combusts any amount of hospital waste and/or medical/infectious waste. CFR, Title 40, Part 60, Subpart Ec § 60.51c.

13. Large HMIWIs that were in existence in 1996, including the Facility, are required to comply with Subpart Ce Emissions Guidelines ("EGs").[1]

14. Under § 111 and §129 of the CAA, and its implementing regulations, each state must submit to EPA for approval a plan to implement and enforce the New Source Performance Standards and Emissions Guidelines. Every state plan must include emission standards, compliance schedules, test methods and procedures to determine compliance with the emission standards, and those state standards must be as stringent as the federal standards. 40 CFR § 60.24(a) and (c).

15. On May 30, 2017, EPA approved the Department's revised 111(d)/129 plan that implements Subparts Ec and Ce. Accordingly, all HMIWIs in

[1] COMAR 26.11.08.08-2 references new performance paragraphs of 40 CFR Part 60, Subpart Ec, "Standards of Performance for Hospital/Medical/Infectious/Waste Incinerators." The Facility is not subject to Subpart Ec directly and is subject only to those paragraphs in Subpart Ec that are incorporated by reference in COMAR 26.11.08.08-2.

Maryland must comply with the emissions limits set forth in COMAR 26.11.08.08-2.

B. State Regulations

16. Section 2-301 of the Environment Article authorizes the Department to adopt regulations for the control of air pollution. Pursuant to that authority, the Department has promulgated implementing regulations set forth in Title 26, Subtitle 11 of COMAR which establish permitting, emissions limitations, monitoring, recordkeeping, and other regulatory requirements regarding air pollution.

17. Section 2-401 of the Environment Article, COMAR 26.11.02.02D, and COMAR 26.11.03.01A(1) require a medical waste incinerator to apply for and obtain permits from the Department before it may construct, cause to be constructed, or operate in Maryland.

18. COMAR 26.11.03.01A(1) requires "major sources" of air pollution, as defined in COMAR 26.11.02.01C, to obtain an operating permit pursuant to Title V of the CAA, 42 U.S.C. §§ 7661 through 7661f. The major source threshold for triggering Title V permitting requirements in Baltimore City is 25 tons per year for volatile organic compounds ("VOCs") or nitrogen oxides ("NOx"), 100 tons per year for any other criteria pollutant, 10 tons per year of any single hazardous air pollutant ("HAP") or 25 tons per year of any combination of HAPs.

19. COMAR 26.11.02.05 states that "a person may not violate or cause to be violated any terms or conditions of a permit issued under [COMAR 26.11.02] or COMAR 26.11.03."

20. COMAR 26.11.01.04 allows the Department to require performance testing to determine compliance with emissions limits.

21. COMAR 26.11.01.11E requires an owner or operator that is required to install a continuous emissions monitor ("CEM") to submit to the Department a quarterly summary report within 30 days following the end of each calendar quarter. The quarterly report must include, but is not limited to, the cause, time periods, and magnitude of all emissions which exceed the applicable emission standards.

22. COMAR 26.11.06.08 states that an installation or premises may not be operated or maintained in such a manner that a nuisance or air pollution is created.

23. COMAR 26.11.08.01B(18) defines a HMIWI as "a special medical waste incinerator that combusts any amount of hospital, medical, and infectious waste.

24. Hospital waste means discards generated at a hospital. COMAR 26.11.08.01B(19).

25. Medical/infectious waste means any waste generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining

thereto, or in the production or testing of biologicals (e.g. vaccines, cultures, blood or blood products, human pathological waste, sharps). COMAR 26.11.08.01B(33)

26. COMAR 26.11.08.01B(25)(a)(ii), defines a large HMIWI as a "continuous or intermittent HMIWI that has a maximum charge rate of more than 500 pounds per day."

27. COMAR 26.11.08.04B prohibits any incinerator or hazardous waste incinerator located in Areas III and IV from discharging emissions that are visible to human observers.[2]

28. Area III includes "the Baltimore metropolitan area of the State comprising Baltimore City and the counties of Anne Arundel, Baltimore, Carroll, Harford, and Howard." COMAR 26.11.01.03C.

29. COMAR 26.11.08.08-2 sets forth the 1997 Subpart Ce (40 CFR Part 60, Subpart Ce, as revised, October 6, 2009) emissions standards for existing HMIWIs, and required improvements in performance across a wide array of air pollutants.

30. COMAR 26.11.08.08-2B(1) establishes, in relevant part, emissions limits for (i) hydrogen chloride of 6.6 parts per million by volume ("ppmv"),

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[2] COMAR 26.11.08.04C. Exceptions. The requirements of §§ A and B of this regulation do not apply to emissions during start-up, or adjustments or occasional cleaning of control equipment if: (1) The visible emissions are not greater than 40 percent opacity; and (2) The visible emissions do not occur for more than 6 consecutive minutes in any 60-minute period.

corrected to 7% oxygen, (ii) carbon monoxide ("CO") of 11 ppmv, corrected to 7% oxygen, with both limits measured on a 24-hour block average, and (iii) particulate matter ("PM") of 0.011 grams per dry standard cubic foot ("gr/dscf").

31. COMAR 26.11.08.08-2(D)(1), Equipment Inspection Requirements, requires that a permittee annually perform inspections of a HMIWI that at a minimum include the following:

> (a) Inspect all burners, pilot assemblies, and pilot sensing devices for proper operation and clean pilot flame sensor, as necessary;
> (b) Ensure proper adjustment of primary and secondary chamber combustion air, and adjust as necessary;
> (c) Inspect hinges and door latches, and lubricate as necessary;
> (d) Inspect dampers, fans, and blowers for proper operation;
> (e) Inspect HMIWI door and door gaskets for proper sealing;
> (f) Inspect motors for proper operation;
> (g) Inspect primary chamber refractory lining; clean and repair or replace lining as necessary;
> (h) Inspect incinerator shell for corrosion or hot spots, or both;
> (i) Inspect secondary/tertiary chamber and stack and clean as necessary;
> (j) Inspect mechanical loader, including limit switches, for proper operation, if applicable;
> (k) Visually inspect waste bed (grates), and repair or seal, as appropriate;
> (l) For the burn cycle that follows the inspection, document that the incinerator is operating properly and make any necessary adjustments;
> (m) Inspect air pollution control device or devices for proper operation, if applicable;
> (n) Inspect waste heat boiler systems to ensure proper operation, if applicable;
> (o) Inspect bypass stack components;
> (p) Ensure proper calibration of thermocouples, sorbent feed systems and any other monitoring equipment; and
> (q) Generally observe that the equipment is maintained in good operating condition.

C. Penalty Authority

32. Section 2-609 of the Environment Article authorizes the Department to bring an action to enjoin any conduct or seek a penalty for violations of Title 2 of the Environment Article or any regulation adopted under Title 2.

33. Section 2-610(a) of the Environment Article provides that a person who violates any provision of Title 2 of the Environment Article or any rule, regulation, or order adopted or issued under that Title is liable for a civil penalty of up to $25,000 per violation and that each day a violation continues is a separate violation under that section.

FACTUAL ALLEGATIONS

34. CBE owns and operates the Facility, located at 3200 Hawkins Point Road, Baltimore, Maryland 21226.

35. The Facility burns (i.e. incinerates) hospital, medical, and infectious waste. The incineration process releases a wide array of pollutants into the ambient atmosphere, including particulate matter, carbon monoxide, dioxins/furans, hydrogen chloride, sulfur dioxide, nitrogen oxides, lead, cadmium, and mercury.

36. Particulate matter is the name given to the mixture of solid particles found in the air, including dust, dirt, soot, or smoke. Particulate matter comes in many sizes and shapes and can be made up of hundreds of different chemicals. Particulate matter contains microscopic solids that are so small they can be inhaled

deep into a person's lungs, leading to adverse health effects including aggravation of asthma and other respiratory ailments, decreased lung function, development of chronic respiratory disease and premature death from heart and lung disease. Young children and the elderly are particularly vulnerable to the adverse impacts of particulate matter pollution.

37. Carbon monoxide ("CO") is a colorless, odorless gas emitted from combustion processes. Exposure to CO can reduce the oxygen-carrying capacity of the blood, which can cause harmful health effects of reduced oxygen to the body's tissues and organs, including the heart and brain. People who suffer from any of several types of heart disease already have a reduced capacity for pumping oxygenated blood to the heart. When such people are exercising or under stress, their heart disease can cause them to experience myocardial ischemia (reduced oxygen to the heart), often accompanied by chest pain (angina). For these people, short-term CO exposure further affects their bodies' already compromised ability to respond to the increased oxygen demands of exercise or exertion. At extremely high levels, CO can cause death.

38. Dioxins and furans are the abbreviated names for a family of toxic substances that share a similar chemical structure. These chemicals are considered to be toxic air pollutants and are believed to be cancer causing substances to humans.

39. Hydrogen chloride ("HCl") is a colorless to slightly yellow gas with an irritating, pungent odor. HCl, both as a gas and as an aqueous solution, is a strong acid which is highly corrosive to human tissue. Exposure to the substance will cause strong burns to unprotected eyes and skin. Inhalation of the gas and mist can lead to lung irritation and, in serious cases, pulmonary oedema and death. Additionally, HCl lowers the pH of any water that it is released into, causing the water to become acidic. Acidic water has a pH below 7, which causes irritation due to the corrosive effects of low pH levels. The World Health Organization warns that extreme pH levels can worsen existing skin conditions. Aquatic wildlife also suffers from the effects of pH extremes. Fish die-off occurs when pH levels dip below 4.5. The impact of HCl on surface water is significant because more than 60 percent of the public water supply comes from surface water sources, according to the U.S. Geological Survey.

40. Mercury emitted into the air eventually settles into water or onto land where it can be washed into water. Once mercury is deposited, certain microorganisms can change it into methyl mercury, a highly toxic form that builds up in fish, shellfish and animals that eat fish. Fish and shellfish are the main sources of methylmercury exposure to humans. Mercury exposure at high levels can harm the brain, heart, kidneys, lungs, and immune system of people of all ages and it has been demonstrated that high levels of methyl mercury in the bloodstream of unborn babies and young children may harm the developing nervous system, making the

children less able to think and learn. Birds and mammals that eat fish are exposed to mercury to a degree greater than other animals in water ecosystems. Similarly, predators that eat fish-eating animals may be highly exposed. At high levels of exposure, methyl mercury's harmful effects on these animals include death, reduced reproduction, slower growth and development, and abnormal behavior.

41. Lead, depending on the level of exposure, can adversely affect the nervous system, kidney function, immune system, reproductive and developmental systems and the cardiovascular system. Once taken into the body, lead distributes throughout the body in the blood and is accumulated in the bones. Lead exposure also affects the oxygen carrying capacity of the blood. The lead effects most encountered in current populations are neurological effects in children and cardiovascular effects (e.g., high blood pressure and heart disease) in adults. Infants and young children are especially sensitive to even low levels of lead, which may contribute to behavioral problems, learning deficits and lowered IQ. Lead is persistent in the environment and accumulates in soils and sediments through deposition from air sources, direct discharge of waste streams to water bodies, mining, and erosion. Ecosystems near point sources of lead demonstrate a wide range of adverse effects including losses in biodiversity, changes in community composition, decreased growth and reproductive rates in plants and animals, and neurological effects in vertebrates.

42. The Facility is a large HMIWI pursuant to COMAR 26.11.08.01B(18) and (25)(a)(ii).

43. The Facility is a "major source" of air pollutants and is required to obtain a Part 70 operating permit.

44. On May 1, 2019, MDE issued Part 70 Operating Permit No. 24-510-2975 ("Operating Permit") to CBE authorizing the emission of air pollutants into the ambient atmosphere from the Facility. COMAR 26.11.02.05(A) prohibits CBE from violating or causing to be violated any term of the Operating Permit.

45. In general, the Operating Permit authorizes CBE to burn a maximum of 150 tons per day of medical, hospital, and infectious waste in two identical incineration units, identified as EU-1 and EU-2.

46. The Operating Permit authorizes the Facility to emit particulate matter, carbon monoxide, dioxins/furans, hydrogen chloride, sulfur dioxide, nitrogen oxides, lead, cadmium, and mercury, but only in accordance with the emissions limits established in the Operating Permit.

47. To ensure the pollution limits are met, each incinerator is equipped with its own air pollution control system, and a system of dampers that allow either air pollution control system to be used with either incinerator. Specifically, Section I (Source Identification), Condition 2 of the Operating Permit requires that EU-1 and EU-2 be "controlled by a dual train dry scrubber/Gore® Reactive catalyst fabric filter

baghouse or equivalent control technology with prior approval from the Department and an activated carbon injection system." Similarly, Section IV, Condition 1.0 requires that the two incineration units be controlled by selective non-catalytic reduction ("SNCR") and a dual train dry scrubber/ fabric filter baghouse system.

48. The two incineration units share a common stack, through which the incineration gases flow following treatment by the unit's air pollution control system. The air emissions from the common stack are either stack tested or continuously monitored for compliance with the Operating Permit's emissions limits.

49. Section IV, Table IV-1, Condition 1.1(A)(2) of the Operating Permit establishes, in relevant part, emissions limits for (i) HCl of 6.6 parts per million by volume ("ppmv"), and (ii) CO of 11 ppmv, with both limits measured on a 24-hour block average, corrected to 7% oxygen. Compliance with the HCl and CO emissions limits is determined by a Continuous Emission Monitoring System ("CEMS").

50. Section IV, Table IV-1, Condition 1.1(A)(2) of the Operating Permit also establishes an emission limit for PM of 0.011 gr/dscf. Compliance with the particulate matter limit is determined by the average of three (3) stack test runs with a 1-hour minimum sample time per run, using test methods as specified in 40 CFR § 60.56c(b).

51. Section IV, Table IV-1, Condition 1.1(A)(2) of the Operating Permit also establishes emission limits for (i) dioxins/furans of 9.3 nanograms per dry

standard cubic meter, (ii) sulfur dioxide ("SO_2") of 9 ppmv, (iii) nitrogen oxides ("NOx") of 140 ppmv measured on a 24-hour block average, (iv) lead ("Pb") of 0.036 milligrams per dry standard cubic meter ("mg/dscm"), (v) cadmium ("Cd") of 0.0092 mg/dscm, and (vi) mercury ("Hg") of .018 mg/dscm.

52. Section IV (Plant Specific Conditions), Condition 1.1A(3) of the Operating Permit prohibits the Facility from discharging emissions which are visible to human observers, other than water in an uncombined form. Section IV, Condition 1.3(A)(6) of the Operating Permit requires CBE to "continuously monitor opacity of the stack gases using a Continuous Opacity Monitor (COM) that is certified in accordance with 40 CFR Part 60, Appendix B and meets the quality assurance criteria of the Department's Air and Radiation Administration's (MDE-ARA) Technical Memorandum 90-01 'Continuous Emission Monitoring (CEM) Policies and Procedures' (October 199; amended), which is incorporated by reference." Opacity of combustion gases is widely recognized as a means for identifying emissions of particulate matter.

53. Section IV (Plant Specific Conditions), Condition 1.1.D(1)(d) and(e) of the Operating Permit requires that CBE keep records of the required annual air pollution control device inspection, any required maintenance, and any repairs not completed within 10 days of an inspection, or the time frame established by the Department or EPA.

54. Section IV (Plant Specific Conditions), Condition 1.5(A)(3) of the Operating Permit requires that CBE submit a quarterly summary report to the Department not later than 30 days following each calendar quarter. The report shall be in a format approved by the Department, and shall include the following: (a) [t]he cause, time periods, and magnitude of all emissions which exceed the applicable emission standards; (b) [t]he source downtime including the time and date of the beginning and end of each downtime period and whether the source downtime was planned or unplanned; (c) [t]he time periods and cause of all CEM downtime including records of any repairs, adjustments, or maintenance that may affect the validity of emission data; (d) [q]uarterly totals of excess emissions, installation downtime, and CEM downtime during the calendar quarter; (e) Quarterly quality assurance activities; and (f) [d]aily calibration activities that include reference values, actual values, absolute or percent of span differences, and drift status; and (g) [o]ther information required by the Department that is determined to be necessary to evaluate the data, to ensure that compliance is achieved, or to determine the applicability of this regulation."

55. Section IV (Plant Specific Conditions), Condition 1.3(A)(2) of the Operating Permit requires that CBE install, calibrate (to manufacturers' specifications), maintain, and operate devices (or establish methods) for monitoring

the applicable maximum and minimum operating parameters listed in Table 2 of the Operating Permit.

56. Section IV (Plant Specific Conditions), Condition 1.3(A)(4) of the Operating Permit requires that CBE obtain monitoring data at all times during HMIWI operation except during periods of monitoring equipment malfunction, calibration, or repair. At a minimum, valid monitoring data shall be obtained for 75 percent of the operating hours per day and for 90 percent of the operating days per calendar quarter that the affected facility is combusting hospital waste and/or medical/infectious waste.

57. During the second, third and fourth quarters of 2023, CBE submitted to the Department required quarterly CEMs reports which showed that the Facility exceeded the Operating Permit's 24-hour block average emissions limit for HCl on 73 separate occasions/days.

58. During the second, third, and fourth quarters of 2023, CBE submitted to the Department required quarterly CEMs reports which showed that the Facility exceeded the Operating Permits 24-hour block average emissions limit for CO on 77 separate occasions/days.

59. On September 13, 2023, November 15, 2023, January 30, 2024, and February 7, 2024, the Department issued to CBE Notices of Violation for the HCl and CO emissions limit exceedances that occurred in each of the quarters.

60. On November 16-17, 2023, CBE performed a test of the emissions coming from the Facility's common stack through which combustion gases from both incinerator units are released. The results of the stack test showed that the Facility was in non-compliance with its particulate matter limit. The stack test report showed that the average PM emission rate measured during the November 2023 stack test to be 0.012 gr/dscf, which was above the Operating Permit's emissions limit of 0.011 gr/dscf.

61. On January 18, 2024, CBE performed a retest of its stack emissions to demonstrate compliance with the Facility's particulate matter limit. As of the date of this complaint, a final stack test report has not been provided.

62. On November 16, 2023, CBE commenced a RATA, which is a quality assurance test to ensure that the CEMS are providing accurate, consistent, and reliable data. The RATA Report showed that the relative accuracy for the HCl CEM was greater than 25% of the reference method, which violates the performance requirements of 40 CFR 60, Appendix B, making the HCl CEM readings invalid data, in violation of Section 1.3(A)(4) of the Operating Permit.

63. During the 4th quarter of 2023, the HCl CEM was not collecting valid data for 23 operating days during the quarter, which is a violation of the 90% availability requirement found in Section 1.3(A)(4) of the Operating Permit.

64. On January 30, 2024, the Department issued a Notice of Violation for

the failed PM stack test and for not collecting valid data for 25% of the operating days during the quarter, which is a violation of the 90% availability requirement found in Section 1.3A(4) of the Operating Permit.

65. On January 5, 2024, MDE received a report from the Maryland Department of Emergency Management's Joint Operations Center notifying MDE that dark smoke was observed coming from the Facility. Intermittently, between approximately 7:00 a.m. until approximately 9:30 a.m. the Facility experienced low draft issues on EU-1, which resulted in visible smoke from the roof ventilators at times. The Facility also experienced a failure in the EU-2 induced draft fan turbine coupling while the turbine was in operation and had to secure the fan to assess required repairs. During the EU-2 fan shutdown, the EU-1 fan could not adequately provide draft to prevent smoke from exiting the lower chamber at times, causing smoke emissions from the roof ventilators.

66. On January 13 and 24, 2024, MDE received reports from citizens via the MDE website and via telephone notifying MDE that dark smoke was observed coming from the Facility.

67. On January 26, 2024, MDE received a report from the Johns Hopkins University, Curtis Bay monitoring team and an employee of the Maryland Occupational Safety & Health Administration that dark smoke was observed coming from the Facility. A video showing black smoke coming from various vents of the

Facility, and not from the emissions stack, was also posted by the South Baltimore Community Land Trust. Upon information and belief, the smoke consisted of incineration gases that did not pass through the Facility's regular pollution control train.

68. On January 29, 2024, an MDE inspector performing a follow-up inspection at the CBE Facility performed an EPA-approved opacity test (Method 9 VE Observation). The inspector observed dark smoke coming from the Facility and created an observation report, noting the opacity of the smoke, the duration of the observation, and that the point of discharge was from the "roof vents near bypass stacks" and not from the emissions stack. Upon information and belief, the smoke consisted of incineration gases that did not pass through the Facility's regular pollution control train.

69. On February 5, 2024, an MDE inspector observed dark smoke coming from the Facility. The observation began at approximately 1:18 p.m. and continued until 1:25 p.m., when the smoke was more visible. The inspector took photographs of the smoke at both those times. According to the inspector, "faint smoke was present at [1:18 p.m.], leaving the facility through the roof. At 1:25 PM, the intensity of visible smoke leaving the facility through the roof had increased. I continued to observe the smoke at varying intensities."

70. In addition, in a statement to MDE, CBE stated that the smoke was from a nonfunctional turbine which was allowing the smoke to "back flow" instead of being pushed through the baghouse. Accordingly, upon information and belief, the smoke consisted of incineration gases that did not pass through the Facility's regular pollution control train.

71. On February 6, 2024, MDE received reports from multiple citizens via the MDE website and via telephone notifying MDE that dark smoke was observed coming from the Facility. Upon information and belief, the smoke consisted of incineration gases that did not pass through the Facility's regular pollution control train.

72. On February 8, 2024, MDE was notified and received videos and photographs from local citizen groups that dark smoke was observed coming from the Facility on February 7, 2024.

73. On February 9, 2024, in response to the citizen report received on February 8, MDE performed an inspection at the Facility. During the inspection, an MDE inspector observed black smoke coming out of the roof vents at the Facility. The inspector took a photograph of the smoke at approximately 2:44 p.m. to record the observation. Upon information and belief, the smoke consisted of incineration gases that did not pass through the Facility's regular pollution control train.

74. On February 11, 2024, MDE received a report from a citizen that dark smoke was coming from the Facility. The citizen reporting the incident sent a video to MDE via email on February 12, 2024. Upon information and belief, the smoke consisted of incineration gases that did not pass through the Facility's regular pollution control train.

75. On February 21, 2024, MDE received a report from a citizen that dark smoke was coming from the Facility at approximately 4 p.m. MDE received a video from the citizen, confirming that the smoke was coming from the Facility's roof vents, and not the emissions stack. Upon information and belief, the smoke consisted of incineration gases that did not pass through the Facility's regular pollution control train.

76. On February 26, 2024, MDE received a report from a citizen that smoke was coming from the Facility. A timelapse video was provided showing smoke coming from the Facility's roof vents, and not the emissions stack. Upon information and belief, the smoke consisted of incineration gases that did not pass through the Facility's regular pollution control train.

77. On information and belief, the efficient operation of the Facility's control devices is required to meet the pollutant emissions limits of the Operating Permit. Failure to run the emissions through the control devices, such that dark

smoke is visible to observers, caused unauthorized emissions to the ambient atmosphere in violation of the Operating Permit and COMAR 26.11.02.05.

78. The Facility's windows, roof-top vents, and openings other than the common stack are not an identified emissions unit authorized under Section I, Condition 2 of the Operating Permit.

79. On February 9, 13, and 26, 2024, the Department issued to CBE Notices of Violation for the visible emissions on five separate days.

COUNT I
Exceedance of Particulate Matter Limits
(Violation of COMAR 26.11.08.08-2B(1) and COMAR 26.11.02.05A)

80. The Department realleges and incorporates by reference the allegations of all prior paragraphs of this Complaint.

81. COMAR 26.11.02.05A prohibits any person from violating the terms of their operating permit.

82. COMAR 26.11.08.08-2 and Section IV, Table IV-1, Condition 1.1(A)(2) of the Operating Permit establishes a PM emission limit of 0.011 gr/dscf.

83. Section IV, Table IV-1, Condition 1.1(A)(2) of the Operating Permit requires that compliance with the particulate matter limit be demonstrated by the average of three stack test runs with a one-hour minimum sample time per run, using the test methods specified in 40 CFR § 60.56c(b).

84. On November 16-17, 2023, CBE performed a particulate matter stack test. The results show that the average PM emission rate measured during the test to be 0.012 gr/dscf, in violation of COMAR 26.11.08.08-2B(1) and the Operating Permit.

85. The Facility operated on 63 days between the failed stack test on November 17, 2024, and the retest on January 18, 2024, constituting at least 63 days of violation.

86. Section 2-609 of the Environment Article authorizes the Department to bring a civil action for an injunction and/or a penalty under § 2-610 of the Environment Article for violations of Title 2 of the Environment Article or any regulation adopted under Title 2.

87. Section 2-610 provides that "[a] person who violates any provision of this title or any rule, regulation, or order adopted or issued under this title is liable for a civil penalty not exceeding $25,000, to be collected in a civil action in the circuit court for any county. Each day a violation continues is a separate violation under this section."

COUNT II
Exceedance of Hydrogen Chloride Limits
(Violation of COMAR 26.11.08.08-2B(1) and COMAR 26.11.02.05A)

88. The Department realleges and incorporates by reference the allegations of all prior paragraphs of this Complaint.

89. COMAR 26.11.02.05A prohibits any person from violating the terms of their operating permit.

90. COMAR 26.11.08.08-2 and Section IV, Table IV-1, Condition 1.1(A)(2) of the Operating Permit establishes a HCl emission limit of 6.6 ppmv, as determined on a 24-hour block average.

91. Section IV, Table IV-1, Condition 1.1(A)(2) of the Operating Permit requires that compliance with the HCl limit be demonstrated by a CEMS.

92. CBE reported the following exceedances of the hydrogen chloride limit of 6.6 ppmv on the following days:

Date	HCl Rate (ppmv)	Date	HCl Rate (ppmv)
April 22, 2023	8.6	August 3, 2023	33.9
June 4, 2023	7.4	August 4, 2023	39.5
June 18, 2023	11.8	August 5, 2023	15.4
June 22, 2023	56.8	August 6, 2023	31.9
June 23, 2023	33.7	August 7, 2023	48.0
June 24, 2023	8.4	August 8, 2023	45.5
June 27, 2023	17.4	August 9, 2023	44.8
June 28, 2023	21.7	August 10, 2023	18.5
June 27, 2023	17.4	August 11, 2023	7.1
July 3, 2023	20.1	August 14, 2023	10.6
July 4, 2023	53.1	August 21, 2023	35.7
July 5, 2023	53.9	August 28, 2023	10.7
July 6, 2023	50.6	August 29, 2023	24.4
July 7, 2023	30.9	August 30, 2023	44.8
July 8, 2023	18.8	September 7, 2023	16.8
July 10, 2023	7.4	September 11, 2023	9.4
July 11, 2023	7.2	September 12, 2023	38.1
July 13, 2023	7.2	September 13, 2023	38.9
July 14, 2023	46.2	September 15, 2023	10.9
July 15, 2023	24.3	September 16, 2023	12.9

Date	HCl Rate (ppmv)	Date	HCl Rate (ppmv)
July 16, 2023	21.1	September 18, 2023	14.6
July 17, 2023	47.6	September 19, 2023	26.8
July 18, 2023	48.5	September 20, 2023	31.4
July 19, 2023	9.2	September 21, 2023	7.5
July 20, 2023	41.8	September 27, 2023	23.4
July 21, 2023	90.2	September 28, 2023	39.3
July 22, 2023	43.6	September 29, 2023	42.2
July 23, 2023	56.7	October 6, 2023	7.39
July 24, 2023	83.5	October 7, 2023	8.47
July 25, 2023	86.2	October 10, 2023	8.27
July 26, 2023	90.6	October 23, 2023	6.91
July 27, 2023	96.5	October 30, 2023	13.65
July 28, 2023	56.7	December 15, 2023	6.91
July 29, 2023	12.1	December 16, 2023	18.61
August 2, 2023	9.6	December 21, 2023	11.06
September 3, 2023	27.8	December 25, 2023	17.23
September 4, 2023	41.8		

93. Each day of exceedance of the hydrogen chloride limit is a separate day of violation of COMAR 26.11.08.08-2B(2) and the Operating Permit, constituting 73 days of violation.

94. Section 2-609 of the Environment Article authorizes the Department to bring a civil action for an injunction and/or a penalty action under § 2-610 of the Environment Article for violations of Title 2 of the Environment Article or any regulation adopted under Title 2.

95. Section 2-610 provides that "[a] person who violates any provision of this title or any rule, regulation, or order adopted or issued under this title is liable for a civil penalty not exceeding $25,000, to be collected in a civil action in the circuit

court for any county. Each day a violation continues is a separate violation under this section."

COUNT III
Exceedance of Carbon Monoxide Limits
(Violation of COMAR 26.11.08.08-2B(1) and COMAR 26.11.02.05A)

96. The Department realleges and incorporates by reference the allegations of all prior paragraphs of this Complaint.

97. COMAR 26.11.02.05A prohibits any person from violating the terms of their operating permit.

98. COMAR 26.11.08.08-2 and Section IV, Table IV-1, Condition 1.1(A)(2) of the Operating Permit establishes a carbon monoxide emission limit of 11 ppmv, as determined on a 24-hour block average.

99. Section IV, Table IV-1, Condition 1.1(A)(2) of the Operating Permit requires that compliance with the carbon monoxide limit be demonstrated by a CEMS.

100. CBE reported the following exceedances of the carbon monoxide limit of 11 ppmv on the following days:

Date	CO Rate (ppmv)	Date	CO Rate (ppmv)
April 20, 2023	68	August 4, 2023	33
May 20, 2023	25	August 5, 2023	15
May 23, 2023	15	August 7, 2023	39
June 4, 2023	13	August 8, 2023	29
June 10, 2023	19	August 9, 2023	31
June 18, 2023	26	August 10, 2023	22

Date	CO Rate (ppmv)	Date	CO Rate (ppmv)
June 20, 2023	32	August 11, 2023	49
June 21, 2023	29	August 12, 2023	52
June 22, 2023	46	August 13, 2023	92
June 23, 2023	39	August 14, 2023	68
June 24, 2023	21	August 16, 2023	13
June 25, 2023	15	August 17, 2023	41
June 26, 2023	40	August 18, 2023	17
June 27, 2023	86	August 19, 2023	38
June 28, 2023	82	August 21, 2023	19
June 29, 2023	47	August 23, 2023	13
June 30, 2023	59	August 25, 2023	19
July 1, 2023	27	August 28, 2023	20
July 2, 2023	69	August 29, 2023	14
July 3, 2023	34	September 5, 2023	12
July 6, 2023	26	September 6, 2023	35
July 13, 2023	13	September 7, 2023	21
July 14, 2023	32	September 8, 2023	16
July 15, 2023	71	September 12, 2023	20
July 16, 2023	27	September 17, 2023	19
July 17, 2023	55	September 19, 2023	12
July 18, 2023	22	September 20, 2023	12
July 19, 2023	34	September 23, 2023	13
July 20, 2023	28	October 7, 2023	14.16
July 21, 2023	131	October 29, 2023	47.35
July 22, 2023	191	October 30, 2023	18.11
July 23, 2023	186	November 3, 2023	12.78
July 24, 2023	28	November 14, 2023	23.96
July 25, 2023	14	November 18, 2023	20.8
July 26, 2023	15	November 21, 2023	16.63
July 27, 2023	41	December 4, 2023	15.45
July 28, 2023	12	December 6, 2023	12.05
August 3, 2023	12	December 17, 2023	24.18
		December 27, 2023	25.14

101. Each day of each exceedance of the carbon monoxide limit is a separate violation of COMAR 26.11.08.08-2B(1) and the Operating Permit, constituting 77 days of violation.

102. Section 2-609 of the Environment Article authorizes the Department to bring a civil action for an injunction and/or a penalty under § 2-610 of the Environment Article for violations of Title 2 of the Environment Article or any regulation adopted under Title 2.

103. Section 2-610 provides that "[a] person who violates any provision of this title or any rule, regulation, or order adopted or issued under this title is liable for a civil penalty not exceeding $25,000, to be collected in a civil action in the circuit court for any county. Each day a violation continues is a separate violation under this section."

COUNT IV
Exceedance of Visible Emissions Limits
(Violation of COMAR 26.11.08.04B and COMAR 26.11.02.05A)

104. The Department realleges and incorporates by reference the allegations of all prior paragraphs of this Complaint.

105. COMAR 26.11.02.05A prohibits any person from violating the terms of their operating permit.

106. COMAR 26.11.08.04B and Section IV, Table IV-1, Condition 1.1(A)(3) of the Operating Permit prohibits the discharge of emissions from an incinerator in Baltimore City which are visible to human observers, other than water in an uncombined form.

107. On January 5, January 13, January 24, January 26, January 29, February 5, February 6, February 8, February 9, February 11, February 21, and February 26, 2024, smoke was observed coming from the Facility.

108. For each smoke incident, the Department received a telephonic or written report, from a citizen or citizen group, a video and/or photograph, or an inspection observation from MDE inspectors, which confirm the existence of the smoke emanating from the Facility.

109. Each day smoke emissions were seen by human observers is a separate violation of COMAR 26.11.08.04 and the Operating Permit, constituting 12 days of violation.

110. Section 2-609 of the Environment Article authorizes the Department to bring a civil action for an injunction and/or a penalty under § 2-610 of the Environment Article for violations of Title 2 of the Environment Article or any regulation adopted under Title 2.

111. Section 2-610 provides that "[a] person who violates any provision of this title or any rule, regulation, or order adopted or issued under this title is liable for a civil penalty not exceeding $25,000, to be collected in a civil action in the circuit court for any county. Each day a violation continues is a separate violation under this section."

COUNT V
Unpermitted Emission of Air Pollutants
(Violation of COMAR 26.11.06.08 and COMAR 26.11.02.05A)

112. The Department realleges and incorporates by reference the allegations of all prior paragraphs of this Complaint.

113. COMAR 26.11.02.05A prohibits any person from violating the terms of their operating permit.

114. COMAR 26.11.06.08 and Section VI, Condition 1 of the Operating Permit prohibits an installation or premises from being operated or maintained in such a manner that a nuisance or air pollution is created.

115. Section I, Condition 2 of the Operating Permit authorizes air emissions from Incinerator Unit 1 (EU-1) and Incinerator Unit 2 (EU-2) which are to be "controlled by a dual train dry scrubber/Gore® Reactive catalyst fabric filter baghouse or equivalent control technology with prior approval from the Department and an activated carbon injection system."

116. Pursuant to the Facility's design, incinerator gases which pass through the Facility's pollution control systems are emitted through the Facility's shared emissions stack.

117. To demonstrate compliance with the Facility's emissions limits, the Facility must either monitor stack emissions using CEMs installed on the shared emissions stack or perform a stack test of emissions from the shared stack.

Monitoring from both the CEMs and the stack test occurs in the emissions system downstream of the pollution control systems.

118. Emissions from vents, windows, and areas other than through the combined stack occurred without passing through the identified pollution control devices and without required monitoring, and therefore are not authorized by the Operating Permit.[3]

119. On information and belief, smoke emissions from the Facility on January 5, January 13, January 24, January 26, January 29, February 5, February 6, February 8, February 9, February 11, February 21, and February 26, 2024, were released from roof vents, windows, and other openings which are not identified as emissions points in the Operating Permit. Upon information and belief, those emissions did not pass through the required emissions control systems, were not monitored or otherwise tested for compliance, and were otherwise unpermitted.

120. Each day unpermitted smoke emissions escaped through openings other than the common emissions stack is a separate violation of COMAR 26.11.06.08 and the Operating Permit, constituting 12 days of violation.

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[3] This is consistent with other sections of the Operating Permit, which, for example, provide that incinerator emissions which are emitted through the bypass stack are considered to violate PM, CDD/CDF, HCl, Pb, Cd, and Hg limits. *See* Table 1 - Alternative Surrogate Compliance Indicators for CDD/CDF and Other Emissions of the Operating Permit, p 52.

121. Section 2-609 of the Environment Article authorizes the Department to bring a civil action for an injunction and/or a penalty action under § 2-610 of the Environment Article for violations of Title 2 of the Environment Article or any regulation adopted under Title 2.

122. Section 2-610 provides that "[a] person who violates any provision of this title or any rule, regulation, or order adopted or issued under this title is liable for a civil penalty not exceeding $25,000, to be collected in a civil action in the circuit court for any county. Each day a violation continues is a separate violation under this section."

COUNT VI
Failure to Obtain Valid Operating Data
(Violation of COMAR 26.11.02.05A)

123. The Department realleges and incorporates by reference the allegations of all prior paragraphs of this Complaint.

124. COMAR 26.11.02.05A prohibits any person from violating the terms of their operating permit.

125. Section VI, Table IV-1, Condition 1.3(A)(4) of the Operating Permit requires the Facility to obtain monitoring data at all times during HMIWI operation except during periods of monitoring equipment malfunction, calibration, or repair; and at a minimum, obtain valid monitoring data for 75 percent of the operating hours

per day and for 90 percent of the operating days per calendar quarter that the Facility is combusting hospital waste and/or medical/infectious waste.

126. For twenty operating days during the fourth quarter of 2023, the Facility reported that its HCl CEM was not reading valid data due to daily calibration failures, the RATA test results, or other reasons.

127. The requirement to obtain valid data for ninety percent of the days in every quarter means that each day after the tenth day that CBE's HCl CEM failed to collect/report valid data in the fourth quarter of 2023 is a violation. Accordingly, because the Facility failed to collect valid monitoring data from its HCl CEM for 23 days there are 13 days of violation.[4]

128. Section 2-609 of the Environment Article authorizes the Department to bring a civil action for an injunction and/or a penalty under § 2-610 of the Environment Article for violations of Title 2 of the Environment Article or any regulation adopted under Title 2.

129. Section 2-610 provides that "[a] person who violates any provision of this title or any rule, regulation, or order adopted or issued under this title is liable for a civil penalty not exceeding $25,000, to be collected in a civil action in the circuit

[4] The fourth quarter has 92 days. Accordingly, the requirement to collect valid data for 90 percent of the operating days in the fourth quarter equals 82.8 days of valid data. CBE collected only 69 days of valid data during the fourth quarter resulting in 13 days of violations.

court for any county. Each day a violation continues is a separate violation under this section."

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing allegations, the Maryland Department of the Environment requests that this Honorable Court:

1. Enter a preliminary and permanent injunction directing CBE to:
   a. Cease all further emissions from the Facility that are not in compliance with applicable State and federal laws and/or the Operating Permit.
   b. Immediately inspect and make all necessary repairs to the incinerator and associated equipment to prevent additional, uncontrolled, and visible emissions.
   c. Immediately inspect and make all necessary repairs to the incinerator and associated equipment to prevent future emissions of CO, HCl, and PM in amounts prohibited by law and/or the Operating Permit.
   d. Within 30 days, submit a complete and adequate application to MDE for a permit to construct, as appropriate, prior to performing any upgrades to the Facility.

2. Impose a civil penalty against CBE of up to $25,000 for each separate violation of COMAR 26.11 in accordance with § 2-610 of the Environment Article.

3. To grant such other relief as the Court deems just and proper.

Respectfully submitted,

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