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ASSISTANT ATTORNEYS GENERAL

October 1, 2007

Robert P. Duckworth, Clerk
Circuit Court for Anne Arundel County
7 Church Circle
Annapolis, MD 21401

Re: State of Maryland, Department of the Environment v.
Constellation Power Source Generation, Inc. and BBSS, Inc.

Dear Mr. Duckworth:

Enclosed for filing in the referenced matter is a Complaint and proposed Consent Decree resolving the Complaint for entry by the Court. Because the plaintiff is the State of Maryland, no filing fee is enclosed. Please date-stamp and return the additional copy to me in the enclosed envelope. You may contact me at 410-537-3049 if you have any questions about this matter.

Sincerely,

A handwritten signature in cursive script that reads "M. Rosewin Sweeney".

M. Rosewin Sweeney
Assistant Attorney General

Enclosures

cc: Tim Henderson, Esq.
Pamela Marks, Esq.

Circuit Court for Anne Arundel County

City or County

CIVIL-NON-DOMESTIC CASE INFORMATION REPORT

Directions:

Plaintiff: This Information Report must be completed and attached to the complaint filed with the Clerk of Court unless your case is exempted from the requirement by the Chief Judge of the Court of Appeals pursuant to Rule 2-111(a). A copy must be included for each defendant to be served.

Defendant: You must file an Information Report as required by Rule 2-323(h).

THIS INFORMATION REPORT CANNOT BE ACCEPTED AS AN ANSWER OR RESPONSE.

FORM FILED BY: PLAINTIFF DEFENDANT CASE NUMBER: _____

CASE NAME: Md. Dept of the Environment v Constellation Power Source Generation, inc. (Click to insert)

JURY DEMAND: Yes No Anticipated length of trial: _____ hours or 1 days

RELATED CASE PENDING? Yes No If yes, Case #(s), if known: _____

Special Requirements? Interpreter/communication impairment Which language _____
(Attach Form 1-332 if Accommodation or Interpreter Needed) Which dialect _____
 ADA accommodation: _____

NATURE OF ACTION (CHECK ONE BOX) DAMAGES/RELIEF

TORTS <input type="checkbox"/> Motor Tort <input type="checkbox"/> Premises Liability <input type="checkbox"/> Assault & Battery <input type="checkbox"/> Product Liability <input type="checkbox"/> Professional Malpractice <input type="checkbox"/> Wrongful Death <input type="checkbox"/> Business & Commercial <input type="checkbox"/> Libel & Slander <input type="checkbox"/> False Arrest/Imprisonment <input type="checkbox"/> Nuisance <input type="checkbox"/> Toxic Torts <input type="checkbox"/> Fraud <input type="checkbox"/> Malicious Prosecution <input type="checkbox"/> Lead Paint <input type="checkbox"/> Asbestos <input type="checkbox"/> Other	LABOR <input type="checkbox"/> Workers' Comp. <input type="checkbox"/> Wrongful Discharge <input type="checkbox"/> EEO <input type="checkbox"/> Other CONTRACTS <input type="checkbox"/> Insurance <input type="checkbox"/> Confessed Judgment <input type="checkbox"/> Other REAL PROPERTY <input type="checkbox"/> Judicial Sale <input type="checkbox"/> Condemnation <input type="checkbox"/> Landlord Tenant <input type="checkbox"/> Other OTHER <input type="checkbox"/> Civil Rights <input checked="" type="checkbox"/> Environmental <input type="checkbox"/> ADA <input type="checkbox"/> Other	A. TORTS Actual Damages <input type="checkbox"/> Under \$7,500 <input type="checkbox"/> \$7,500 - \$50,000 <input type="checkbox"/> \$50,000 - \$100,000 <input type="checkbox"/> Over \$100,000 <input type="checkbox"/> Medical Bills \$ _____ <input type="checkbox"/> Property Damages \$ _____ <input type="checkbox"/> Wage Loss \$ _____	B. CONTRACTS <input type="checkbox"/> Under \$10,000 <input type="checkbox"/> \$10,000 - \$20,000 <input type="checkbox"/> Over \$20,000	C. NONMONETARY <input type="checkbox"/> Declaratory Judgment <input checked="" type="checkbox"/> Injunction <input type="checkbox"/> Other _____
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ALTERNATIVE DISPUTE RESOLUTION INFORMATION
Is this case appropriate for referral to an ADR process under Md. Rule 17-101? (Check all that apply)
A. Mediation Yes No C. Settlement Conference Yes No
B. Arbitration Yes No D. Neutral Evaluation Yes No

TRACK REQUEST
With the exception of Baltimore County and Baltimore City, please fill in the estimated LENGTH OF TRIAL. THIS CASE WILL THEN BE TRACKED ACCORDINGLY.
 1/2 day of trial or less 3 days of trial time
 1 day of trial time More than 3 days of trial time
 2 days of trial time

PLEASE SEE PAGE TWO OF THIS FORM FOR INSTRUCTIONS PERTAINING TO THE BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM AND ADDITIONAL INSTRUCTIONS IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE COUNTY, BALTIMORE CITY, OR PRINCE GEORGE'S COUNTY.

Date 10/1/07 Signature M. E. Roswell Sweeney

BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM

For all jurisdictions, if Business and Technology track designation under Md. Rule 16-205 is requested, attach a duplicate copy of complaint and check one of the tracks below.



Expedited

Trial within 7 months of Defendant's response



Standard

Trial - 18 months of Defendant's response

EMERGENCY RELIEF REQUESTED _____

Signature

Date

IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE COUNTY, BALTIMORE CITY, OR PRINCE GEORGE'S COUNTY PLEASE FILL OUT THE APPROPRIATE BOX BELOW.

CIRCUIT COURT FOR BALTIMORE CITY (check only one)

- Expedited Trial 60 to 120 days from notice. Non-jury matters.
- Standard-Short Trial seven months from Defendant's response. Includes torts with actual damages up to \$7,500; contract claims up to \$20,000; condemnations; injunctions and declaratory judgments.
- Standard-Medium Trial 12 months from Defendant's response. Includes torts with actual damages over \$7,500 and under \$50,000, and contract claims over \$20,000.
- Standard-Complex Trial 18 months from Defendant's response. Includes complex cases requiring prolonged discovery with actual damages in excess of \$50,000.
- Lead Paint Fill in: Birthdate of youngest plaintiff _____.
- Asbestos Events and deadlines set by individual judge.
- Protracted Cases Complex cases designated by the Administrative Judge.

CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY

To assist the Court in determining the appropriate Track for this case, check one of the boxes below. This information is not an admission and may not be used for any purpose other than Track Assignment.

- Liability is conceded.
- Liability is not conceded, but is not seriously in dispute.
- Liability is seriously in dispute.

CIRCUIT COURT FOR BALTIMORE COUNTY

- Expedited Attachment Before Judgment, Declaratory Judgment (Simple), Administrative Appeals, (Trial Date-90 days) District Court Appeals and Jury Trial Prayers, Guardianship, Injunction, Mandamus.
- Standard Condemnation, Confessed Judgments (Vacated), Contract, Employment Related Cases, Fraud (Trial Date-240 days) and Misrepresentation, Intentional Tort, Motor Tort, Other Personal Injury, Workers' Compensation Cases.
- Extended Standard Asbestos, Lender Liability, Professional Malpractice, Serious Motor Tort or Personal Injury (Trial Date-345 days) Cases (medical expenses and wage loss of \$100,000, expert and out-of-state witnesses (parties), and trial of five or more days), State Insolvency.
- Complex Class Actions, Designated Toxic Tort, Major Construction Contracts, Major Product (Trial Date-450 days) Liabilities, Other Complex Cases.

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

Plaintiff,

v.

CONSTELLATION POWER SOURCE
GENERATION, INC.
111 Market Place; Suite 500
Baltimore, Maryland 21201

SERVE ON:
John L. Wood, Resident Agent
750 East Pratt Street
Baltimore, Maryland 21202

and

BBSS, INC.
1 Church Road
Millersville, Maryland 21108

SERVE ON:
Thomas I. Baldwin, Resident Agent
647 Lakeland Road, S.
Severna Park, Maryland 21146

Defendants.

IN THE
CIRCUIT COURT
FOR
ANNE ARUNDEL COUNTY,
MARYLAND

CASE NO.:

* * * * *

COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

The State of Maryland, Department of the Environment ("MDE" or the "Department"), by and through its attorneys, Douglas F. Gansler, Attorney General, and Jacqueline Russell, Assistant Attorney General, files this Complaint for Injunctive Relief and Civil Penalties and sues Constellation Power Source Generation, Inc. and BBSS, Inc. for the following reasons:

INTRODUCTION

1. This is an action for injunctive relief to compel Defendants BBSS, Inc. and Constellation Power Source Generation, Inc., to abate violations of Maryland's water pollution control and surface mining laws at a surface mining and ash reclamation operation at property owned by Defendant BBSS, Inc. and operated by Defendant Constellation Power Source Generation, Inc. This action also seeks civil penalties against both Defendants for violations of Maryland's water pollution control laws, § 9-301 *et seq.* of the Environment Article, Annotated Code of Maryland ("Title 9, Subtitle 3") and against Defendant BBSS, Inc. for violations of Maryland's surface mining laws, §§ 15-801 *et seq.* ("Title 15, Subtitle 8").

JURISDICTION AND VENUE

2. The State brings this action for injunctive relief pursuant to §§ 9-339 and 15-832(b) of the Environment Article and Maryland Rules 15-501 through 15-505.

3. The State brings this action for civil penalties pursuant to §§ 9-342(a) and 15-832(a) of the Environment Article.

4. This Court has jurisdiction pursuant to §§ 6-102 through 6-103 of the Courts and Judicial Proceedings Article as the Defendants have interests in property and/or conduct business in Maryland at all times relevant to this Complaint.

5. Venue is proper in this Court pursuant to § 6-201 of the Courts and Judicial Proceedings Article, Annotated Code of Maryland because the Defendants own property and are engaged in activities relevant to this Complaint in Anne Arundel County, Maryland.

PARTIES

6. The Plaintiff is a State agency within the Executive Branch of the State of Maryland. The Department of the Environment is charged with the responsibility for enforcing the State's comprehensive scheme for protecting waters of the State and for implementing and enforcing the State's surface mining program.

7. Defendant BBSS, Inc. ("BBSS") is a Maryland corporation incorporated in 1989. Defendant is the fee simple owner of the property located on Maryland Route 3 between Brickhead and Evergreen Roads, Millersville, Anne Arundel County, Maryland and found on Anne Arundel County Tax Map 36 at Parcels 61 and 63 and Tax Map 37 at Parcels 222 and 224 (the "Site") at which the water pollution control and surface mining violations that are the subject of this Complaint occur and continue to occur. BBSS is the holder of Surface Mining Permits 94-SP-0468C and 77-SP-0096G, authorizing BBSS to engage in surface mining and fly ash reclamation at the Site. BBSS acquired title to the Site by deed dated December 18, 1989 and recorded in the land records of Anne Arundel County at liber 4998 folio 395.

8. Defendant Constellation Power Source Generation Inc. ("Constellation") is a Maryland corporation incorporated in 2000. Defendant is operator of the Site, and has otherwise engaged in conduct and conducted business in Anne Arundel County relevant to this Complaint. Defendant is also the holder of State Discharge Permit 98-DP-0194/NPDES Permit MD0001503, authorizing the discharge of certain pollutants to waters of the State from the H.A. Wagner and Brandon Shores coal fired electric power stations. The permit allows fly ash, a by-product from the combustion of coal, to be used for beneficial use mine reclamation.

9. Defendants have engaged in and continue to engage in activities at the Site in violation of Maryland laws and regulations. These actions have resulted in conditions at the Site that present serious public health and environmental risks. Contaminants have reached groundwater and residential drinking water wells adjacent to the Site, making it imperative that injunctive relief be granted. The Department is entitled to injunctive relief to stop the ongoing violations and to prevent future violations.

REGULATORY AUTHORITY

10. The term "discharge" is defined in § 9-101(b) of the Environment Article, Annotated Code of Maryland, as the "addition, introduction, leaking, spilling, or emitting of a pollutant into the waters of the State" or the "placing of a pollutant in a location where the pollutant is likely to pollute."

11. The term "pollutant" is defined by § 9-101(g) of the Environment Article, Annotated Code of Maryland, as any "(1) Any waste or wastewater that is discharged from (i) A publicly owned treatment works; or (ii) An industrial source; or (2) Any other liquid, gaseous, solid, or other substance that will pollute any waters of this State."

12. The term "pollution" means any contamination or other alteration of the physical, chemical, or biological properties of any waters of this State, including a change in temperature, taste, color, turbidity, or odor of the waters or the discharge or deposit of any organic matter, harmful organisms, or liquid, gaseous, solid, radioactive, or other substance into any waters of this State, that will render the waters harmful or detrimental to: (1) public health, safety, or welfare; (2) domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; (3) livestock, wild animals, or birds; or (4) fish or other aquatic life.

13. The term “waters of this State” is defined by § 9-101(I) of the Environment Article, Annotated Code of Maryland, to include “both surface and underground waters within the boundaries of this State subject to its jurisdiction, including parts of the Atlantic Ocean within the boundaries of this State, the Chesapeake Bay, and its tributaries, and all ponds, lakes, rivers, streams, public ditches, tax ditches and public drainage systems within this State, other than those designed to collect, convey, or dispose of sanitary waste...”

Water Pollution Control

14. Title 9, Subtitle 3, of the Environment Article establishes the statutory framework for the prevention, abatement and control of pollution of waters of the State. Section 9-322 prohibits a person from discharging any pollutant into the waters of the State. Section 9-323 requires a person to hold a discharge permit issued by the State before the person may operate: 1) an industrial, commercial or recreational facility or disposal system; 2) a State-owned treatment facility; or 3) any other outlet or establishment, if its operation could cause or increase the discharge of pollutants into the waters of the State. Regulations implementing Title 9, Subtitle 3, are codified at Code of Maryland Regulations (“COMAR”) 26.08.03.01A(1) and 26.08.04.01B.

15. COMAR 26.08.02.09C(1) provides that the discharge of pollutants may not cause groundwater to exceed primary or secondary drinking water standards as provided by COMAR 26.04.01.

16. COMAR 26.04.01.06A establishes the maximum contaminant levels (“MCLs”) for inorganic chemicals in drinking water.

17. The Department enforces the laws pertaining to water pollution control in accordance with Sections 9-334 through 9-344 of the Environment Article. Section 9-339

authorizes the Department to bring actions for injunctive relief against any person who violates any provision of Title 9, Subtitle 3, of the Environment Article or any rule or regulation adopted thereunder. Section 9-339 provides, moreover, that the Court shall grant an injunction without requiring the Department to show a lack of adequate remedy at law.

18. Section 9-342(a) of the Environment Article authorizes the Court to impose civil penalties of up to \$10,000 per violation upon a showing that any person is violating any provision of Title 9, Subtitle 3, or any rule or regulation adopted thereunder. Each day of violation constitutes a separate violation.

Regulation of Surface Mining

19. Title 15, Subtitle 8, of the Environment Article establishes the statutory framework for the regulation of surface mining in the State of Maryland. Section 15-807 provides that a person may not engage in surface mining within the State without first obtaining a surface mining license. Section 15-808 provides that a licensee may not engage in surface mining within the State except on land that is covered by a valid surface mining permit.

20. Section 15-832(a) provides that the Attorney General may bring a civil action in the circuit court of the county or city where the mining operation is located against any person who violates any provision of Title 15, Subtitle 8 or any regulation, permit, notice, or order issued thereunder, and that the circuit court may find the violator liable to the State for a penalty not exceeding \$5,000 for each offense. Each day on which the violation occurs constitutes a separate offense.

21. Section 15-832(b) of the Environment Article provides that on application by the Department, verified by oath or affirmation, the circuit court of the county or city

where the mining operation is located may enforce by injunction compliance with, or restrain the violation of any order, notice, permit, rule, or regulation of the Department made pursuant to the provisions of Title 15, Subtitle 8.

GENERAL ALLEGATIONS

22. On February 1, 2001, the Department issued State Discharge Permit 98-DP-0194, NPDES Permit MD0001503 (the "Discharge Permit") to Defendant Constellation pursuant to the provisions of Title 9 of the Environment Article, Annotated Code of Maryland, (1996 Repl. Vol.) ("Environment Article") and regulations promulgated there under, and the provisions of the Clean Water Act, 33 U.S.C. Section 1251 *et seq.* and implementing regulations 40 CFR Parts 1122, 123, 124 and 125, authorizing the discharge of certain pollutants from the H.A. Wagner and Brandon Shores coal-fired electric power stations located at 1000 Brandon Shores Road in Anne Arundel County (the "Power Plants") to the Patapsco River and Cox Creek, waters of the State, in accordance with special and general conditions set forth in the Discharge Permit. The Discharge Permit is attached as Exhibit A and incorporated by reference herein.

23. Special Condition R of the Discharge Permit contains the conditions regarding fly ash handling, and provides that fly ash removed from the Power Plants must be stored or disposed of in an approved facility. Special Condition R also provides that a separate NPDES permit is not necessary if the permittee demonstrates to the Department that the fly ash will be used for "beneficial purposes," which include mine reclamation. Special Condition R contains minimum standards for the operation of a beneficial use facility. Minimum standard #2 specifies that fly ash may not be placed in the 100-year floodplain or at an elevation below the maximum seasonal water table or at any other location which could cause continuous contact with surface or groundwater for greater

than 24 hours. Minimum standard #8 requires Constellation to install a groundwater monitoring system of wells up-gradient and down-gradient of the facility to be used for obtaining samples of the groundwater or any leachate from the mine. Minimum standard #11 requires Constellation to sample the monitoring wells on a quarterly basis and to submit a summary of the results to the Department.

24. On December 22, 1994, the Department issued Surface Mining Permit 94-SP-0468D (the "Turner Permit") to Defendant BBSS pursuant to the provisions of Title 15 of the Environment Article, and regulations promulgated thereunder. The Turner Permit authorizes BBSS to engage in a surface mining operation located at the Site on a permit area not to exceed 114.51 acres, known as the "Turner Pit." The Turner Permit incorporates a Department approved Mining and Reclamation Plan that provides that reclamation may include the use of fly ash and bottom ash (hereinafter coal combustion products or "CCP") from the Power Plants as fill material. The permit was renewed on August 11, 2000 and September 30, 2005, with a current expiration date of December 31, 2009. The Turner Permit is attached as Exhibit B and incorporated by reference herein.

25. On November 8, 1977, the Department issued Surface Mining Permit 77-SP-0096-G (the "Waugh Chapel Permit") to Defendant BBSS pursuant to the provisions of Title 15 of the Environment Article, and regulations promulgated thereunder, authorizing BBSS to engage in a surface mining operation at the Site on a permit area not to exceed 77.8 acres, known as the "Waugh Chapel Pit." The Waugh Chapel Permit also incorporates a Department approved Mining and Reclamation Plan that provides that reclamation may include the use of CCP from the Power Plants as fill material at the Site. The permit was renewed on October 8, 1981, February 22, 1985, August 9, 1988, August 10, 1993, August 31, 1998, and February 6, 2003, with a current expiration date of

January 31, 2008. The Waugh Chapel Permit is attached as Exhibit C and incorporated by reference herein.

26. Under the terms and conditions of the Turner and Waugh Chapel Permits, BBSS must comply with a Pollution Prevention Plan (the "P2 Plan") and a Remedial Response Contingency Plan (the "Contingency Plan") approved by the Department and incorporated into permits. The P2 Plan requires sampling of a network of monitoring wells, located up-gradient and down-gradient of the CCP areas, on a quarterly basis, and analysis of the water from the wells for the fifteen inorganic chemicals included in COMAR 26.04.01.06 and for chloride, sulfate, dissolved solids, and pH. The P2 Plan also requires monitoring of water levels to verify groundwater flow and seasonal variation. If the sampling results indicate the groundwater exceeds any of the groundwater action levels listed in Table I of the Contingency Plan, pursuant to the Section 3.0 of the Contingency Plan the monitoring wells must be re-sampled within 30 days of receipt of the laboratory results. If the results of the re-sampling indicate an action level exceedence, Section 3.0 requires the sampling frequency to be increased to monthly for a minimum of six months for the well exhibiting the exceedence. During this monitoring period, an evaluation must be performed to identify whether any sources other than CCP fill may be responsible for the exceedence. In the event that the exceedence cannot be related to a source other than the CCP fill, the Contingency Plan requires remedial action. The P2 Plan and the Contingency Plan are attached as Exhibits D and E and incorporated by reference herein.

27. The terms of the P2 Plan also require that a cover with permeability of less than or equal to 10^{-7} cm/sec must be placed over the completed CCP fill area.

28. Groundwater monitoring data collected from September 1999 through 2004 in monitoring wells down-gradient of the Turner Pit revealed elevated concentrations of sulfates and heavy metals. To contain the contamination, in 2004 Constellation installed a "Pump and Treat" groundwater recovery system in the Turner Pit. The Pump and Treat system discharges to Towsers Branch via State Discharge Permit 03-DP-3431 NPDES Permit MD0068993 (the "Pump and Treat Permit"), issued to BBSS by the Department on September 22, 2003. The Pump and Treat Permit is attached as Exhibit F and incorporated by reference herein.

29. Based on a review of the quarterly monitoring reports at the Turner and Waugh Chapel Pits submitted to the Department, the Department determined that constituent action levels in Table 1 of the Contingency Plan were exceeded repeatedly at perimeter monitoring wells 7, 13, 20, 21, and 22.

30. Clay permeability test samples taken on September, 2002, September 12, 2003, March 15, 2005 and January 1, 2007 showed that the permeability of the clay cap on the Turner Pit and Waugh Chapel Pits was less protective than the 1×10^{-7} limit contained in Section III of the P2 Plan.

31. Groundwater samples collected in 2006 and 2007 from residential drinking water wells in the vicinity of the Site indicate that, in certain locations, contaminants including heavy metals and sulfates were present at or above the groundwater quality standards.

32. A study dated June, 2007 prepared by Environmental Resources Management ("ERM") for the Maryland Department of Natural Resources Power Plant Research Program evaluated available data and concluded that CCP are a source of certain contaminants in groundwater in the vicinity of the Site.

33. The ERM study also concluded that the presence of wet areas at the Waugh Chapel Site indicated that CCP was placed so as to allow contact with surface or groundwater in a manner that failed to meet the minimum standard for the operation of a fly ash beneficial use facility.

34. Defendants have engaged in flyash disposal activities at the Site that resulted in pollution of waters of the State in violation of §§ 9-322 and 9-323 of the Environment Article and the violation of Surface Mining Permits 94-SP-0468-D and 77-SP-0096-G, and in violation of State Discharge Permit 98-DP-0194/NPDES Permit M0001503. Such violations are likely to continue until such time Defendants complete substantial improvements to the fly ash reclamation operations at the Site.

COUNT I

(Violation of Surface Mining Permit Corrective Remedial Action Requirements)

35. Paragraphs 1-34 are re-alleged and incorporated herein.

36. Quarterly reports submitted to the Department indicate that during the period 2004 to 2006, Defendants failed to take corrective remedial action in response to the exceedences of the action levels listed in Table 1 of the Contingency Plan at the Turner Pit in violation of Surface Mining Permit 94-SP-0468-D.

37. Quarterly reports submitted to the Department indicate Defendants failed to take corrective remedial action in response to the exceedences of the action levels listed in Table 1 of the Contingency Plan at the Waugh Chapel Pit in violation of Surface Mining Permit 77-SP-0096-G.

38. Each time that Defendants failed to take corrective remedial action after an exceedence of a constituent is a separate violation under Section 15-832(b) of the Environment Article, Annotated Code of Maryland.

39. Section 15-832(b) of the Environment Article, Annotated Code of Maryland provides that the Attorney General may bring a civil action in the circuit court of the county or city where the mining operation is located against any person who violates any provision of Title 15, Subtitle 8, or any regulation, permit, notice, or order issued there under, and that the circuit court may find the violator liable to the State for a penalty not exceeding \$5,000 for each offense. Each day on which the violation occurs constitutes a separate offense.

40. Unless enjoined by an order of the Court, Defendants will continue to violate the corrective action conditions of the Permits.

COUNT TWO

(Violation of Surface Mining Permit Fly Ash Evaluation Requirements)

41. Paragraphs 1-40 are re-alleged and incorporated herein.

42. Quarterly reports submitted to the Department indicate that Defendants failed to timely perform evaluations during the six month monitoring period to identify whether sources other than fly ash fill were responsible for the exceedences of the action levels listed in Table 1 of the Contingency Plan at the Turner Pit in violation of Surface Mining Permit 94-SP-0468-D.

43. Quarterly reports submitted to the Department indicate Defendants failed to perform evaluations during the six month monitoring period to identify whether sources other than CCP fill were responsible for the exceedences of the action levels listed in Table 1 of the Contingency Plan at the Waugh Chapel Pit in violation of Surface Mining Permit 77-SP-0096-G.

44. Each time that Defendants failed to perform an evaluation during the monitoring period to identify whether sources other than CCP fill were responsible for an exceedence of an action level listed in Table 1 of the Contingency Plan is a separate

violation under Section 15-832(b) of the Environment Article, Annotated Code of Maryland.

45. Section 15-832(b) of the Environment Article, Annotated Code of Maryland provides that the Attorney General may bring a civil action in the circuit court of the county or city where the mining operation is located against any person who violates any provision of Title 15, Subtitle 8, or any regulation, permit, notice, or order issued thereunder, and that the circuit court may find the violator liable to the State for a penalty not exceeding \$5,000 for each offense. Each day on which the violation occurs constitutes a separate offense.

46. Unless enjoined by an order of the Court, Defendants will continue to violate the evaluation requirements of the Permits.

COUNT THREE
(Violation of Turner Surface Mining Permit Cap Permeability Requirements)

47. Paragraphs 1-46 are re-alleged and incorporated herein.

48. Clay permeability test results submitted to the Department taken on September, 2002, September 12, 2003, March 15, 2005 and January 1, 2007 show that the permeability of the clay cap at the Turner Pit and Waugh Chapel Pits exceeded the limits contained in Section III of the P2 Plan, in violation of Surface Mining Permit 94-SP-0468-D and Surface Mining Permit 77-SP-0096-G.

49. Each day that the clay cap exceeded the permeability limits of the P2 Plan is a separate violation under Section 15-832(b) of the Environment Article, Annotated Code of Maryland.

50. Section 15-832(b) of the Environment Article, Annotated Code of Maryland provides that the Attorney General may bring a civil action in the circuit court of the county of city where the mining operation is located against any person who violates any

provision of Title 15, Subtitle 8, or any regulation, permit, notice, or order issued thereunder, and that the circuit court may find the violator liable to the State for a penalty not exceeding \$5,000 for each offense. Each day on which the violation occurs constitutes a separate offense.

51. Unless enjoined by an order of the Court, Defendants will continue to violate the cap permeability requirements of the Turner and Waugh Chapel Permits.

COUNT FOUR

(Unauthorized Discharges of Pollutants to Waters of the State)

52. Paragraphs 1-51 are re-alleged and incorporated herein by reference.

53. Sampling results collected from on-site monitoring wells and from residential drinking water wells located downgradient of the Waugh Chapel Pit show exceedences of actions levels listed in Table 1 of the Contingency Plan and contamination with metals and sulfates at or above primary or secondary drinking water standards, constituting unlawful discharges of pollutants to waters of the State, in violation of §§ 9-322 and 9-323 of the Environment Article, Annotated Code of Maryland.

54. Section 9-342 of the Environment Article, Annotated Code of Maryland provides that a person who violates Title 9, Subtitle 3, of the Environment Article or any rule, regulation, order or permit adopted or issued there under shall be subject to a civil penalty of up to \$10,000 per day for each such violation.

55. Unless enjoined by an order of the Court, unauthorized discharges of pollutants from fly ash leachate to waters of the State will continue.

COUNT FIVE

(Violation of Fly Ash Placement Requirements of the Discharge Permit)

56. Paragraphs 1-55 are re-alleged and incorporated herein by reference.

57. The presence of wet areas at the Waugh Chapel Site indicates that CCP was placed so as to allow contact with surface or groundwater in a manner that failed to meet the minimum standard for the operation of a fly ash beneficial use facility and caused contact with surface or groundwater in violation of State Discharge Permit 98-DP-0194, NPDES Permit MD0001503.

58. Section 9-342 of the Environment Article, Annotated Code of Maryland provides that a person who violates Title 9, Subtitle 3, of the Environment Article or any rule, regulation, order or permit adopted or issued there under shall be subject to a civil penalty of up to \$10,000 per day for each such violation.

59. Unless enjoined by an order of the Court, Defendants will continue to violate the fly ash placement conditions of the Discharge Permit.

PRAYER FOR RELIEF

WHEREFORE, the Department respectfully requests that this Court grant the following relief against the Defendants:

A. That the Court enjoin Defendants from violating the surface mining permits and discharge permits, and require them to reclaim the Turner and Waugh Chapel pits so that groundwater quality standards comply with the criteria established by COMAR 26.08.02.09C, without further treatment, as measured in the monitoring wells on the Site and the down-gradient residential drinking water wells.

B. That the Court enjoin Defendants from bringing any additional CCP to the Site for the reclamation of the Waugh Chapel or Turner Pits and require Defendants to take the following actions:

(1) within sixty (60) days submit to the Department for review and approval a corrective action plan and schedule for the capture and

recovery of contaminants from reclamation activities and for mitigation of the source of pollutants within the Waugh Chapel and Turner Pits; and

(2) implement the plan according to the schedule as approved by the Department.

C. That the Court enjoin Defendants from using CCP in any unlined portion of the site and require them to take the following actions:

(1) within ten (10) days submit to the Department an updated pollution prevention plan that provides that Defendants, prior to filling any cell with fly ash, shall install: (i) a six-inch clay liner with 10^{-7} cm/sec permeability; (ii) a 60-mil synthetic liner that is designed to collect leachate; and (iii) other necessary leachate collection, piping and pumping equipment;

(2) dispose of the leachate from any new cell in a manner permitted by the Department or remove the leachate to an approved disposal facility.

(3) install a 12-inch thick clay cap on the filled cell; and

(4) implement the plan according to schedule and as approved by the Department.

D. That the Court require Defendants to take the following actions regarding the residential drinking water wells that have been impacted by fly ash:

(1) submit within thirty (30) days to the Department for review and approval a plan and schedule for the remediation of all drinking wells that have been contaminated by the reclamation activities at the Site as identified by the Department;

- (2) undertake responsibility for the cost of the remediation;
- (3) include in the plan measures for either connecting the impacted residential drinking wells to the County public water system, followed by the proper abandonment of the wells in accordance with all County and State requirements, or drilling a replacement well for each impacted residential drinking well that meets potability and construction standards in accordance with county and State regulations and meets with the approval of the Anne Arundel County Health Department;
- (4) implement the plan in accordance with the schedule as approved by the Department; and
- (5) remediate all additional drinking water wells that may be identified by the Department in the future as being contaminated by CCP reclamation activities at the Site.

E. That the Court enter an injunction requiring Defendants, in the event that the Turner and Waugh Chapel permits terminate, to continue to conduct ongoing groundwater monitoring and sampling at the Site according to the provisions of the Permits, to continue until the Department determines that the Site has been remediated and that groundwater quality standards comply with the criteria of COMAR 26.08.02.09C, without treatment, as measured in the monitoring wells at the Site and the down-gradient residential drinking water wells, and the Department notifies Defendants in writing that the remediation has been successful in protecting groundwater of the State from contamination.

F. That the Court enter an injunction requiring Defendants to perform the following reporting activities:

(1) submit to the Department on a monthly basis the results of all groundwater monitoring performed at the Site, including the reporting of all data and highlighting all exceedences above MCLs;

(2) within 90 days of the completion of each calendar year, submit an annual report to the Department analyzing the results of the groundwater monitoring and summarizing the monitoring data developed and required by the Turner and Waugh Chapel Surface Mining Permits;

(3) submit to the Department on a quarterly basis a summary of the status and effectiveness of the treatment systems at the Site, including trend analyses, so as to determine the effectiveness of the remediation, to continue until the Department determines that the Site has been fully remediated and that groundwater quality standards comply with the criteria of COMAR 26.08.02.09C, without further treatment, as measured in the monitoring wells at the Site and the down-gradient residential drinking water wells, and the Department notifies Defendants in writing that the remediation has been successful in protecting groundwater of the State from contamination.

G. That the Court enter an injunction prohibiting Constellation from the beneficial re-use of any future CCP generated at its power plants through land filling or mine reclamation at any new sites in Maryland without the written approval of the Department.

H. That the Court assess civil penalties against Defendants of up to \$10,000 per day for each violation of Title 9, Subtitle 3, of the Environment Article, the Department's regulations and the Discharge Permit.

I. That the Court assess civil penalties against Defendant BBSS, Inc. of up to \$5,000 per day for each violation of Title 15, Subtitle 8, of the Environment Article, the Department's regulations, and the Surface Mining Permits.

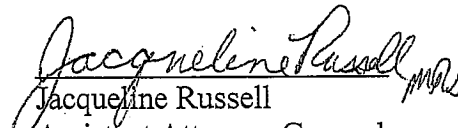
J. Such other relief as this Court deems just and equitable.

CONCLUSION

WHEREFORE, the Department respectfully requests that the Court grant the Prayer for Relief, as detailed in each Count of this Complaint.

Respectfully submitted,

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