ATTACHMENT A

ENVIRONMENTAL INTEGRITY PROJECT

1 Thomas Circle NW, Suite 900
Washington, DC 20005
main: 202-296-8800
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www.environmentalintegrity.org

August 22, 2013

VIA CERTIFIED MAIL RETURN RECEIPT
Karen G. Irons
Manager, Air Quality Permits Program
Maryland Department of the Environment
Air & Radiation Mgmt. Administration
1800 Washington Boulevard
Baltimore, Maryland 21230

RE: Request for Determination Regarding Energy Answers' Commencement of Substantial Construction and for Enforcement of New Source Performance Standards Requiring a Materials Separation Plan

Dear Ms. Irons:

The Environmental Integrity Project ("EIP"), Chesapeake Climate Action Network, Sierra Club, Chesapeake Area Physicians for Social Responsibility, Maryland Environmental Health Network, Clean Water Action, Energy Justice Network, Community Research, and Crabshell Alliance hereby request that the Maryland Department of the Environment ("MDE") render a written determination regarding whether Energy Answers Baltimore, LLC ("Energy Answers") commenced substantial construction of its waste-to-energy plant in Baltimore City by the August 6, 2013 deadline in its Certificate of Public Convenience and Necessity ("CPCN").

The permit expiration provisions of the Clean Air Act exist to ensure that major new sources of pollution comply with current air quality requirements and do not avoid new standards through indefinite delay.[1] Based on all available information, it does not appear that Energy Answers commenced substantial construction of the plant by August 6, 2013, as required to prevent the automatic expiration of the air quality conditions of its CPCN. We therefore request that MDE conduct an investigation into the status of Energy Answers' construction activities and contractual obligations for construction as of August 6, 2013, and make a written determination regarding whether Energy Answers met the legal requirements on that date for commencing substantial construction of the plant.

[1] The deadline for commencing construction exists to "ensures that major pollution sources use the most up-to-date pollution control technology." *U.S. v. Pac. Gas & Electric*, No. C 09-4503 SI, 2011 WL 227662 at *2 (N.D. Cal. January 24, 2011). Guidance issued by EPA states that "the import of this policy is to ensure that the proposed permit meets the current EPA requirements, and that the public is kept apprised of the proposed action (i.e. through the 30-day public comment period.)" Region IX, U.S. Envtl. Prot. Agency, EPA Region IX Policy on PSD Permit Extensions (Guidance Document 1-88) (July 6, 1988).

100% PCW

We also request that MDE require Energy Answers to comply with the substantive and procedural provisions of the Clean Air Act requiring development of a materials separation plan so as to promote recycling.

I. Energy Answers Was Required to Commence Substantial Construction By August 6, 2013

Maryland's State Implementation Plan ("SIP") states that

> [a] permit to construct or an approval expires if, as determined by the Department:
>
> (1) Substantial construction or modification is not commenced within 18 months after the date of issuance of the permit or approval, unless the Department specifies a longer period in the permit or approval . . . .

COMAR 26.11.02.04(B). This regulation is incorporated by reference into Condition A-6 of Energy Answers' CPCN, which states that the air quality provisions of the CPCN shall expire "if, as determined by MDE-[Air and Radiation Administration ("ARMA")] . . . [c]onstruction is not commenced within 36 months after the August 6, 2010 effective date of the CPCN issued in [Maryland Public Service Commission ("PSC")] Case 9199."

While "substantial construction" is not defined in Maryland's SIP, the requirement that construction must be substantial in order to prevent automatic permit expiration is a higher standard than that set forth in federal regulations, which require only that "construction" commence in order to prevent invalidation of Prevention of Significant Deterioration ("PSD") approval. 40 C.F.R. § 52.21(r)(2).

With respect to the activities which constitute commencing construction in the context of New Source Review, Maryland has adopted the same definition as set forth under the federal Clean Air Act and the Environmental Protection Agency's ("EPA") PSD regulations.

> "Commence", as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits[2] and either has:

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[2] This includes MDE's approval of Energy Answers obtaining federally enforceable emissions offsets. Condition A-2 of the CPCN states:

> The CPCN serves at the [PSD] approval, Nonattainment New Source Review (NA-NSR) approval, and air quality construction permit for the Fairfield Renewable Energy Project and does not constitute the permit to construct or approvals until such time as [Energy Answers] has provided documentation demonstrating that [all required offsets] have been obtained and approved by the MDE-ARMA and are federally enforceable.

EIP has submitted Public Information Act (PIA) requests to MDE and the PSC for all documentation demonstrating compliance with this condition.

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source to be completed within a reasonable time; or

(b) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual on-site construction of the source to be completed within a reasonable time.

COMAR 26.11.17.01(7); COMAR 26.11.06.14(B)(1) (incorporating by reference 40 C.F.R. § 52.21, including the definition of "commence"); 42 U.S.C. § 7479(2)(A).

A. Failure to Begin a Continuous Program of Actual On-Site Construction To be Completed Within a Reasonable Time

Based on all available information, Energy Answers did not begin a continuous program of actual on-site construction to be completed within a reasonable time by August 6, 2013. EPA and federal courts have interpreted this language to require installation of structures of a permanent nature. EPA has stated:

> We have interpreted physical on-site construction to refer to placement, assembly, or installation of materials, equipment or facilities which will make up part of the ultimate structure of the source. In order to qualify, these activities must take place on-site or be site specific. Placement of footings, pilings and other materials needed to support the ultimate structures clearly constitutes on-site construction. . . . [I]t will not suffice merely to have begun erection of auxiliary buildings or construction sheds unless there is clear evidence (through contracts or otherwise) that construction of the entire facility will definitely go forward in a continuous manner.

Memorandum from Edward E. Reich, Dir. Of Stationary Source Enforcement, U.S. Envtl. Prot. Agency, to David Kee, Chief Air Enforcement Branch Region V, U.S. Envtl. Prot. Agency (July 1, 1978) ("Reich Memorandum") (Attachment A) (internal citations omitted). Similarly, in *Sierra Club v. Franklin County Power of Illinois*, 546 F.3d 918, 930 (7th Cir. 2008), the Court held that the defendant therein failed to commence construction because the only activity it had undertaken by its permit deadline was to direct a construction company to dig a hole, which the construction company began to do to 5 days after the permit deadline. In reaching this determination, the Court stated that

> [T]he [Defendant] did not engage in any kind of permanent construction activity at all. As of the PSD permit's expiration date . . . , the [Defendant] had laid no foundation and constructed no building supports, underground pipework or permanent storage structures. . . . And digging the hole was not construction activity 'of a permanent nature' as the Defendant's landlord later had the hole refilled.

Id.

It appears that Energy Answers also failed to engage in any construction of a permanent nature by its permit expiration date. According to a Baltimore Sun article dated Friday, August 9, 2013,[3] a spokeswoman for Energy Answers claimed the following with regard to construction activities that week: "[T]he plant site has been surveyed, an access road built and a crane brought in to begin driving pilings for the plant's smokestack." This account is confirmed by the City of Baltimore's building permits webpage which, as of August 9, 2013, showed that all building permits for the Energy Answers facility had expired, although the permit for driving pilings was renewed on Monday, August 12, 2013. [4] We also have an eyewitness account that, as of August 21, 2013, no pilings had been installed at the site.

These activities – surveying the site, access road construction, and placement of a crane without driving any pilings – are not construction activities of a permanent nature and do not constitute "a continuous program of actual on-site construction of the source to be completed within a reasonable time." We also note that the bar for commencing construction is higher in Maryland, which requires commencement of "substantial construction." COMAR 26.11.02.04(B). Therefore, unless MDE obtains evidence showing that Energy Answers undertook substantial construction activities of a permanent nature by August 6, 2013, we respectfully request that MDE determine that Energy Answers did not commence substantial construction under COMAR 26.11.17.01(7)(a) by its permit expiration deadline.

B. Binding Agreements or Contractual Obligations, Which Cannot be Canceled or Modified Without Substantial Loss to the Owner or Operator

We do not presently have information sufficient to determine whether Energy Answers commenced construction by August 6, 2013 under COMAR 26.11.17.01(7)(b), which requires it to "[e]nter[] into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual on-site construction of the source to be completed within a reasonable time." For this reason, we respectfully request that MDE investigate the status of Energy Answers' construction contracts as of August 6, 2013, and make a written determination regarding whether Energy Answers had legally commenced construction of the waste-to-energy plant by that date.

C. MDE Should Determine Whether Substantial Construction Commenced by August 6, 2013

MDE should render a written determination regarding whether Energy Answers commenced substantial construction of the plant by its August 6, 2013 deadline. Apart from using discovery tools available in litigation, members of the public cannot obtain Energy Answers' construction contracts, and, therefore, cannot determine whether substantial construction was legally commenced by August 6, 2013. MDE should use its authority to ensure

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[3] This Baltimore Sun article, titled "Work said to begin on city waste-to-energy plant," is attached here to as Attachment B and is *available at* http://articles.baltimoresun.com/2013-08-09/features/bs-gr-energy-answers-20130809_1_trash-burning-power-plant-energy-answers-plant-site

[4] EIP attorney Leah Kelly confirmed this by checking the Baltimore City Housing Department's permits page, *available at* http://www.baltimorehousing.org/permits, on August 9, 2013, and on August 12, 2012.

that the law is being followed and should do this in the way that promotes transparency, by making a written determination that is available to the public.

MDE is clearly authorized to make this determination under Energy Answers' CPCN, under Maryland's SIP, and under the federal Clean Air Act. *E.g.* Condition A-6, Energy Answers CPCN ("the air quality provisions expire if, as determined by MDE-ARMA, construction is not commenced within 36 months after the August 6, 2010 effective date of the CPCN"); COMAR 26.11.02.04(B) ("A permit to construct or an approval expires if, as determined by the Department . . . [s]ubstantial construction or modification is not commenced within [a specified time] after the date of issuance of the permit or approval"); 42 U.S.C. § 7477 ("The [EPA] shall, and a State may, take such measures, including issuance of an order, or seeking injunctive relief, as necessary to prevent the construction or modification of a major emitting facility which does not conform to the requirements of this part.") (Emphases added.)

We request that MDE use this authority to make a determination in writing regarding whether Energy Answers legally commenced construction of the waste-to-energy plant by August 6, 2013.

II. *Energy Answers Is Required to Prepare, and Provide for Public Review, A Materials Separation Plan*

We are also concerned about Energy Answers' compliance with the pre-construction reporting requirements set forth in 40 C.F.R. § 60.59(b)(b) which must be met under Condition A-18 of its CPCN[5]. In addition to a notice of intent to construct, this regulation requires submission of a materials separation plan and documents associated with the extensive public review required for development of the materials separation plan, including notification of the public meeting on the materials separation plan, a transcript of that public meeting, and the applicant's written responses to public comments submitted on the materials separation plan. 40 C.F.R. § 60.59(b)(b)(5); *see* 40 C.F.R. § 60.57b.

Energy Answers has not taken the following actions, all of which are required under applicable Clean Air Act New Source Performance Standards ("NSPS"):

(1) prepared a preliminary draft materials separation plans;
(2) made that plan available to the public;
(3) held a public meeting on the preliminary plan;
(4) accepted and responded in writing to comments on the preliminary plan;
(5) made the responses to public comments available to the public;

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[5] Condition A-18 states:

> The Fairfield combustors shall be subject to applicable requirements of the Standards of Performance for Large Municipal Waste Combustors for which Construction is Commenced After September 20, 1994 Or For Which Modification Or Reconstruction is Commenced After June 19, 1996 (40 CFR Part 60, Subpart Eb), including but not limited to, provisions related to emission limitations, notifications, performance testing, monitoring and recordkeeping, and to applicable requirements of 40 CFR Part 60, Subpart A.

(6) prepared a final draft materials separation plan considering the public comments received at the meeting;
(7) made the final draft materials separation plan available to the public at a second public meeting; and/or
(8) responded in writing to any comments received at the public meeting on the final draft materials separation plan.

40 C.F.R. § 60.57b. Energy Answers did, however, prepare a materials separation plan[6] for a similar facility that it is it is proposing in Arecibo, Puerto Rico.[7]

Energy Answers determined in its application that, in Baltimore, it did not have to prepare a materials separation plan because the waste will be accepted and processed at a separate location before being delivered to the site of the municipal waste combustor. Energy Answers NSR Permit Application, September 2009 at 4-13 (Attachment C). There is no legal authority for such an interpretation and no applicable exemption set forth in 40 C.F.R. § 60.50b, which governs applicability of the NSPS at 40 C.F.R. Part 60 Subpart Eb. There is also no practical reason that Energy Answers could not simply design the materials separation plan to be implemented at the site where waste is received. In fact, the NSPS allows an applicant significant flexibility to design a materials separation plan which includes multiple sites and facilities, defining "materials separation plan" as:

> a plan that identifies both a goal and an approach to separate certain components of municipal solid waste for a given service area in order to make the separated materials available for recycling. A materials separation plan may include elements such as dropoff facilities, buy-back or deposit-return incentives, curbside pickup programs, or centralized mechanical separation systems. A materials separation plan may include different goals or approaches for different subareas in the service area, and may include no materials separation activities for certain subareas or, if warranted, an entire service area.

40 C.F.R. § 60.51b (emphasis added). Therefore, there is no basis for the conclusion that Energy Answers' plant it is not subject to the requirements of 40 C.F.R. § 60.57b.

Given the State of Maryland's acknowledgment that recycling and composting are by far the most environmentally and economically beneficial forms of waste management, there is no reason to allow Energy Answers to avoid this requirement, which is clearly applicable to its facility in Baltimore. We respectfully request that MDE enforce the conditions of Energy Answers' CPCN and the Clean Air Act by requiring Energy Answers to develop a materials separation plan and to subject that plan to the public review process prescribed by 40 C.F.R. § 60.57b.

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[6] The Materials Separation Plan for the Energy Answers Arecibo waste-to-energy plant is *available at* http://www.arecibo.inter.edu/reserva/epa/Material%20Separation%20Plan.pdf

[7] A Materials Separation Plan has also been prepared for the proposed Frederick/Carroll County waste-to-energy plant and that plan has been subject to public review. *See* Northeast Maryland Waste Disposal Authority permits page at http://www.nmwda.org/projects_and_services/frederick_permit_information.shtml

We respectfully request a response within 14 days of MDE's receipt of this letter.

Sincerely,

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Sierra Club, Maryland Chapter
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Program Coordinator
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Founder & Director

Energy Justice Network
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Philadelphia, PA 19149

Dagmar Fabian
Secretary
Crabshell Alliance of Greater Baltimore, Maryland
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Cockeysville MD 21030

Greg Smith and Suchitra Balachandran
Co-Directors
Community Research

CC Via Certified Mail Return Receipt:

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ATTACHMENT B

STATE OF MARYLAND
DEPARTMENT OF THE ENVIRONMENT
AIR AND RADIATION MANAGEMENT ADMINISTRATION

INSPECTION AND OBSERVATION / AFS POINT ACTION

Baltimore City — COUNTY
Energy Answers Baltimore LLC — FACILITY NAME

AFS No. : 24-510-3532
MDE AI : 67286

ADDRESS 1701 E Patapsco Ave , Curtis Bay, MD 21226

DATE OF INSPECTION 11/01/2013

ANNOUNCED ☐ UNANNOUNCED ☒

ARRIVAL TIME 11:50 AM ☒ PM ☐

DEPARTURE TIME 1:00 AM ☐ PM ☒

INSPECTOR NAME Lang, Steve - Y60

ACTION TYPE / RESULT CODE
PP - Permit On-Site Partial Compliance Evaluation 11/01/2013
48 - Gather Information

FACILITY CONTACT Mr. Kevin Jones — NAME

443-602-3750 — TELEPHONE NO.

AIR PROGRAM
0-SIP Source

TEMPERATURE 70 F	WEATHER	WIND DIRECTION W	WIND SPEED 10-15 mph
☐ HOT ☐ COLD	☐ CLEAR ☒ OVERCAST	N	☐ CALM ☒ MODERATE
☒ MODERATE	☐ RAIN/SNOW ☐ PARTLY CLOUDY	W + E	☐ LIGHT ☐ STRONG
		S	

DISCUSSION:

2013 November 1 - Site Inspection
Verification of Construction

On November 1, 2013, the Department conducted a site inspection of the Energy Answers Fairfield site. The purpose of the inspection was to determine the status of the construction of their Fairfield Renewable Energy Project.

Energy Answers received a permit from the Maryland Public Service Commission (PSC) (CPCN #9199) on August 6, 2010 for the construction of a 120 MW renewable energy power plant at the Fairfield, MD location in Baltimore City. Energy Answers requested and was granted by the PSC on December 10, 2012 an extension of 18-months to begin construction of the Fairfield Renewable Energy Project. In the extension, Energy Answers was given until August 6, 2013 to commence construction of the Fairfield Renewable Energy Project.

During the November 1, 2013 site inspection, Mr. Jones stated that all 32 pilings have been installed to their correct depths and the stack piling installation has been completed. The stack piling project was completed on October 31, 2013 with the re-driving of 9 pilings.

See attached report for additional information and pictures.

Inspector Signature — Date 11/1/13

RHW 11/1/13
Supervisor Signature — Date

AFS COMMENT: 2013 November 1 - PCE - Permit to Construct

ATTACHED SPECIFIC INSPECTION FORMS

ARMA-34

(REVISED 05-27-10)

Energy Answers Baltimore, LLC
1701 East Patapsco Ave
Baltimore, MD 21226

Facility # 510-3532
AI # 67286

CONTACT:
Kevin Jones, Consultant
Email: kjones@energysanswers.com
Phone: 443-602-3750

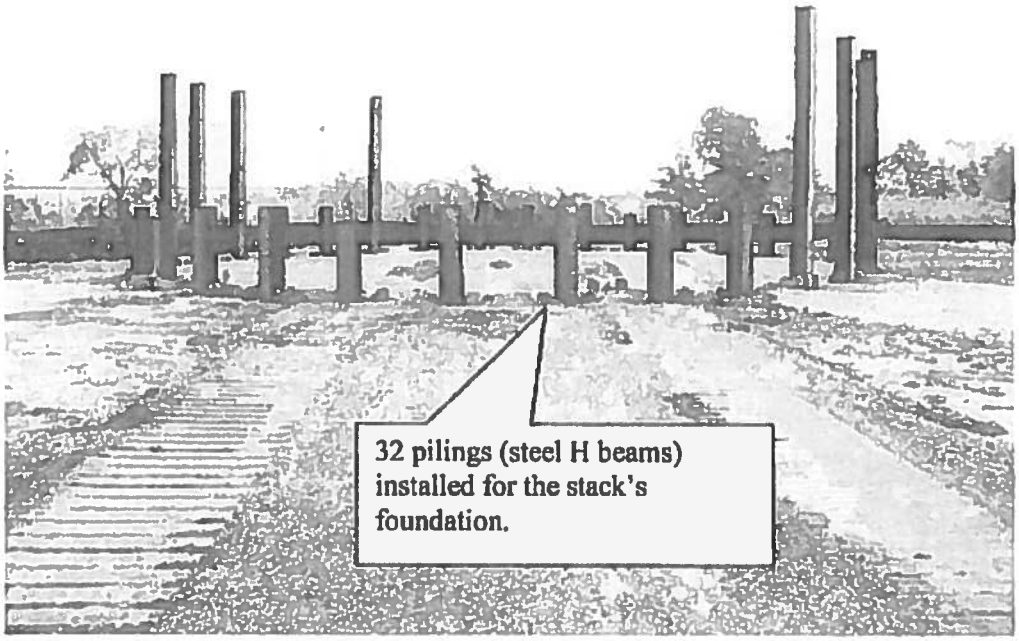
Inspection Date: **November 1, 2013**
Inspectors: Steve Lang, ARMA Compliance Program 11/1/13

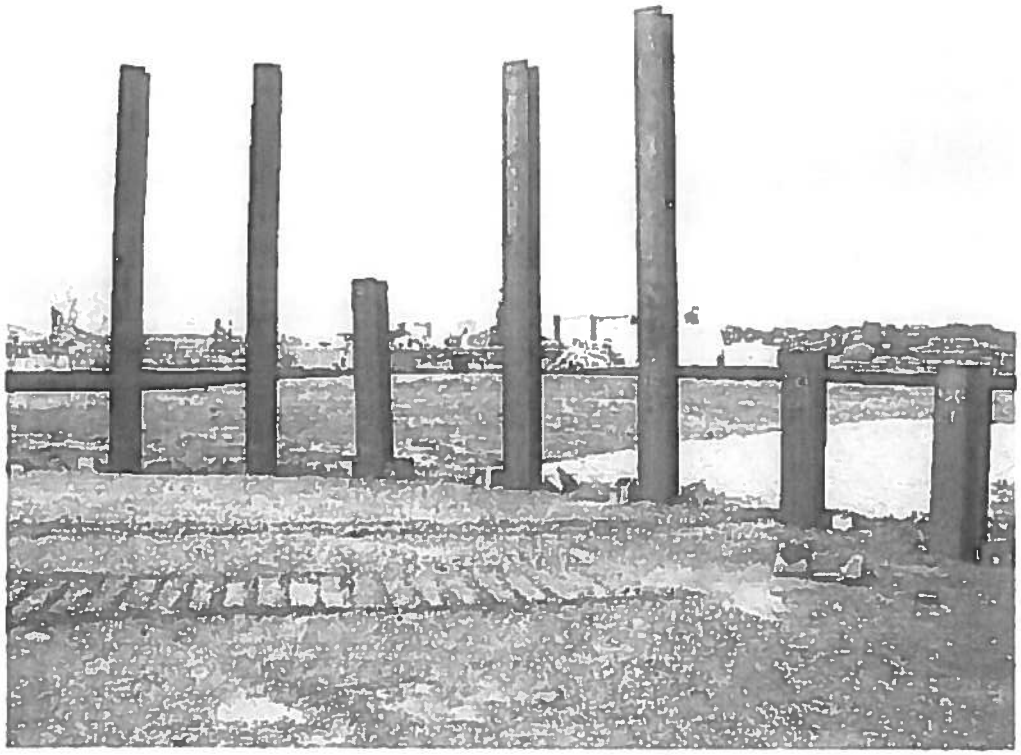
INSPECTION FINDINGS:
During the November 1, 2013 site inspection, it was confirmed that Energy Answers has completed the installation of the 32 pilings (steel H beams) for the facility's stack foundation. No work was being performed during the inspection and the site consultant could not provide any information as to when or what the next step of the facility's construction process would be.

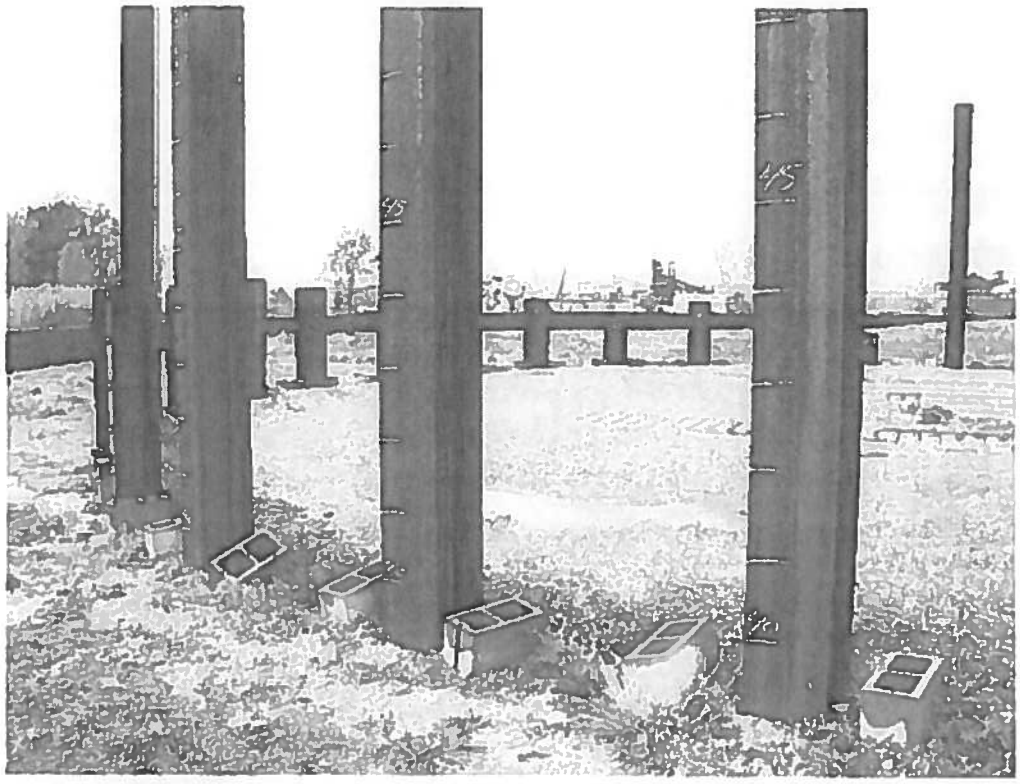
BACKGROUND:
On August 6, 2010, Energy Answers received a permit to construct from the Maryland Public Service Commission (PSC) (CPCN #9199) for the construction of a 120 MW renewable energy power plant at the old FMC location in Fairfield, MD (Baltimore City). On December 10, 2012, the PSC granted Energy Answers' motion to extend the deadline to begin construction of the Fairfield Renewable Energy Project by eighteen (18) months (until August 6, 2013). On August 6, 2013, the Department received a letter dated August 6, 2013 via email from Michael McNerney, Vice President of Energy Answers Baltimore LLC, stating that construction of the Fairfield Renewable Energy Project has commenced. On September 12, 2013, MDE confirmed that construction did begin.

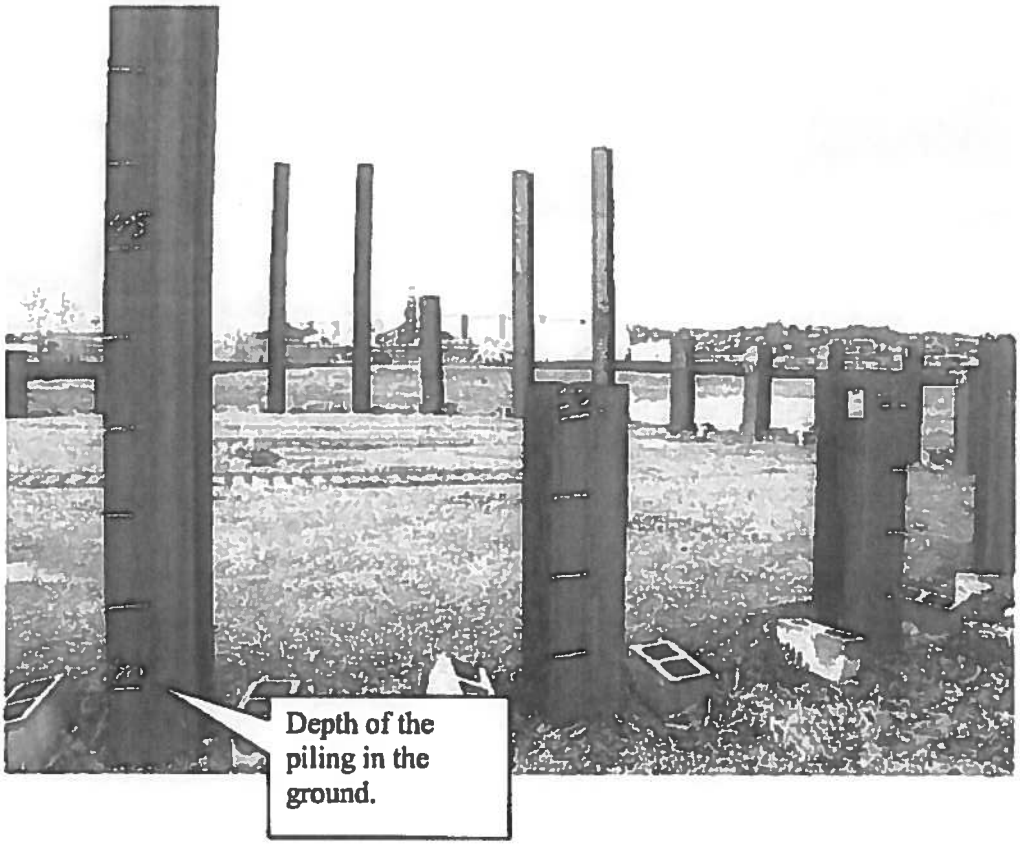
INSPECTION NOTES:
On November 1, 2013, the Department conducted a site inspection of the Fairfield facility to determine the status of the construction on the Fairfield Renewable Energy Project. Mr. Kevin Jones, a consultant for Energy Answers, stated that all of the 32 piling were installed for the foundation of the facility's stack. This phase of the construction process was completed on October 31, 2013 with the re-driving of 9 pilings to the specified resistance level. All pilings were driven to a depth of 37 to 50 feet, depending on its resistance level. No construction workers were onsite and no construction work was being performed during the Department's site visit. Mr. Jones could not give us any additional information on what will be Energy Answers' next step in the construction project and suggested that the Department contact Mr. Michael McNerney if we wanted more information.

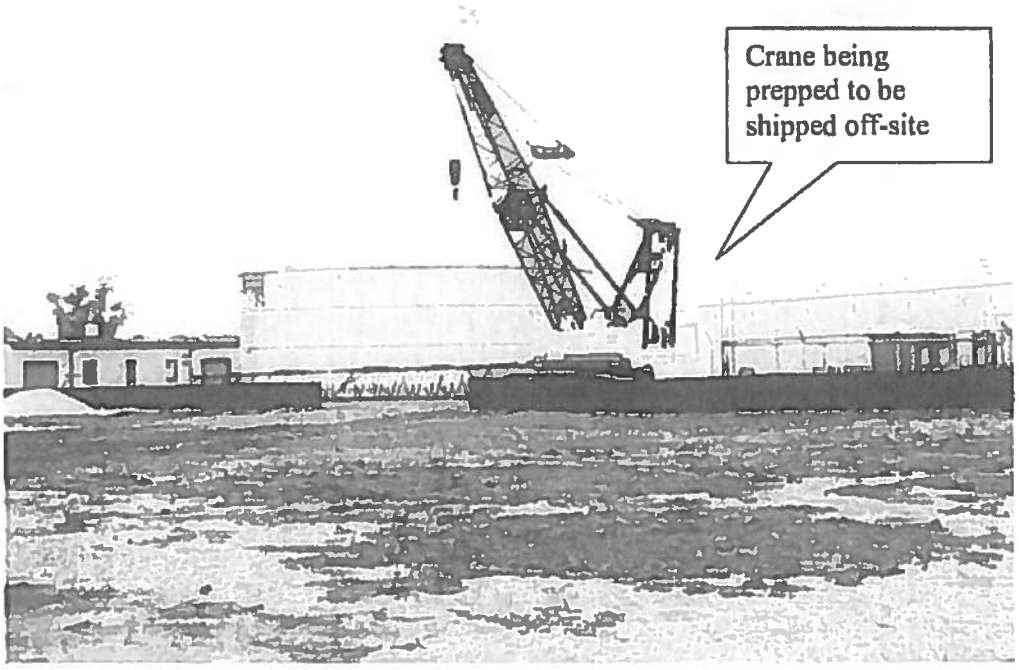
INSPCTION PICTURES:

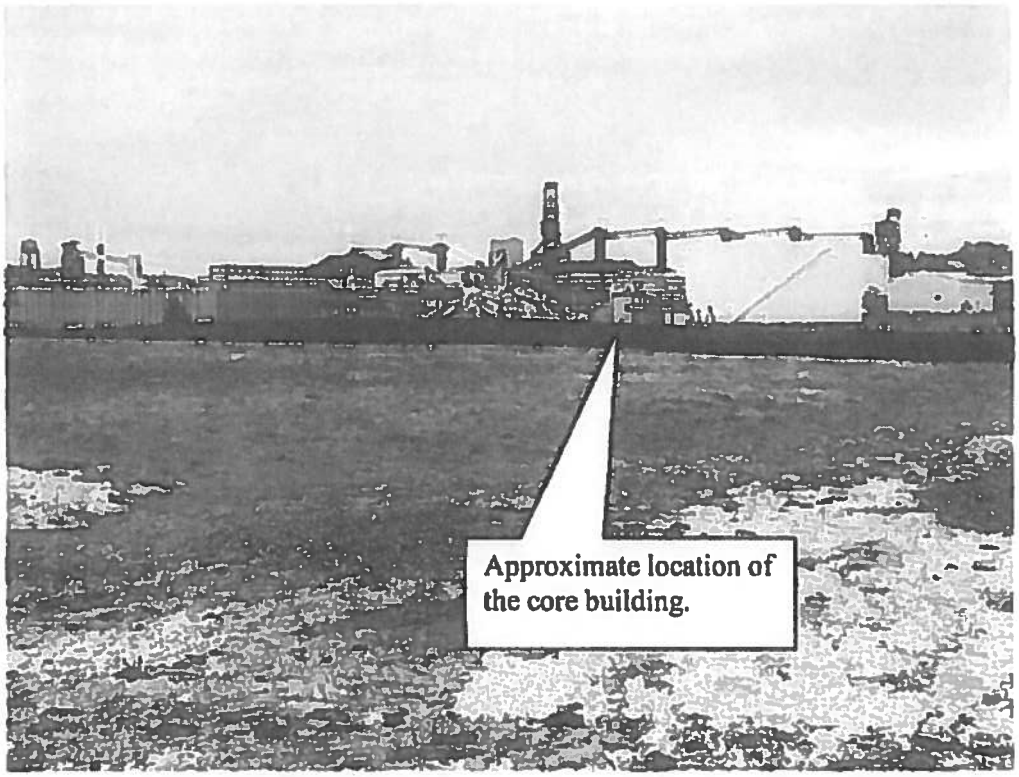

32 pilings (steel H beams) installed for the stack's foundation.






Depth of the piling in the ground.


Crane being prepped to be shipped off-site


Approximate location of the core building.

STATE OF MARYLAND
DEPARTMENT OF THE ENVIRONMENT
AIR AND RADIATION MANAGEMENT ADMINISTRATION

INSPECTION AND OBSERVATION / AFS POINT ACTION

Baltimore City COUNTY	Energy Answers Baltimore LLC FACILITY NAME	AFS No. : 24-510-3532 MDE AI : 67286

ADDRESS 1701 E Patapsco Ave , Curtis Bay, MD 21226

DATE OF INSPECTION 02/28/2014

ANNOUNCED ☐ UNANNOUNCED ☒

ARRIVAL TIME 10:45 AM ☒ PM ☐

DEPARTURE TIME 11:30 AM ☒ PM ☐

INSPECTOR NAME Lang, Steve - Y60

ACTION TYPE / RESULT CODE
PS - Partial Compliance Evaluation – On Site 02/28/2014
48 - Gather Information

AIR PROGRAM
0-SIP Source

FACILITY CONTACT Kevin Jones
NAME

443-602-3751
TELEPHONE NO.

TEMPERATURE	WEATHER	WIND DIRECTION	WIND SPEED
☐ HOT ☒ COLD	☒ CLEAR ☐ OVERCAST	N	☒ CALM ☐ MODERATE
☐ MODERATE	☐ RAIN/SNOW ☐ PARTLY CLOUDY	W + E	☐ LIGHT ☐ STRONG
		S	

DISCUSSION:

2014 February 28 - Site Inspection
Verification of Construction

On February 28, 2014, the Department conducted a site inspection of the Energy Answers Fairfield site. The purpose of the inspection was to determine the status of the construction of their Fairfield Renewable Energy Project.

Energy Answers received a permit from the Maryland Public Service Commission (PSC) (CPCN #9199) on August 6, 2010 for the construction of a 120 MW renewable energy power plant at the Fairfield, MD location in Baltimore City. Energy Answers requested and was granted by the PSC on December 10, 2012 an extension of 18-months to begin construction of the Fairfield Renewable Energy Project. In the extension, Energy Answers was given until August 6, 2013 to commence construction of the Fairfield Renewable Energy Project.

During the February 28, 2014 site inspection, Mr. Jones stated that no additional work has been performed since MDE's last inspection on November 1, 2013.

See attached report for additional information and pictures.

Steve Lang 3/4/14
Inspector Signature Date

R Hill 3/12/14
Supervisor Signature Date

AFS COMMENT: 2014 February 28 - Construction verification inspection

ATTACHED SPECIFIC INSPECTION FORMS

Energy Answers Baltimore, LLC
1701 East Patapsco Ave
Baltimore, MD 21226

Facility # 510-3532
AI # 67286

CONTACT:
Kevin Jones, Consultant
Email: kjones@energysanswers.com
Phone: (443) 602-3750 Cell: (443) 602-3751

Inspection Date: February 28, 2014
Inspectors: Steve Lang, ARMA Compliance Program

INSPECTION FINDINGS:
During the February 28, 2014 site inspection, it was confirmed that Energy Answers has not performed any additional work since MDE's last inspection of November 1, 2013.

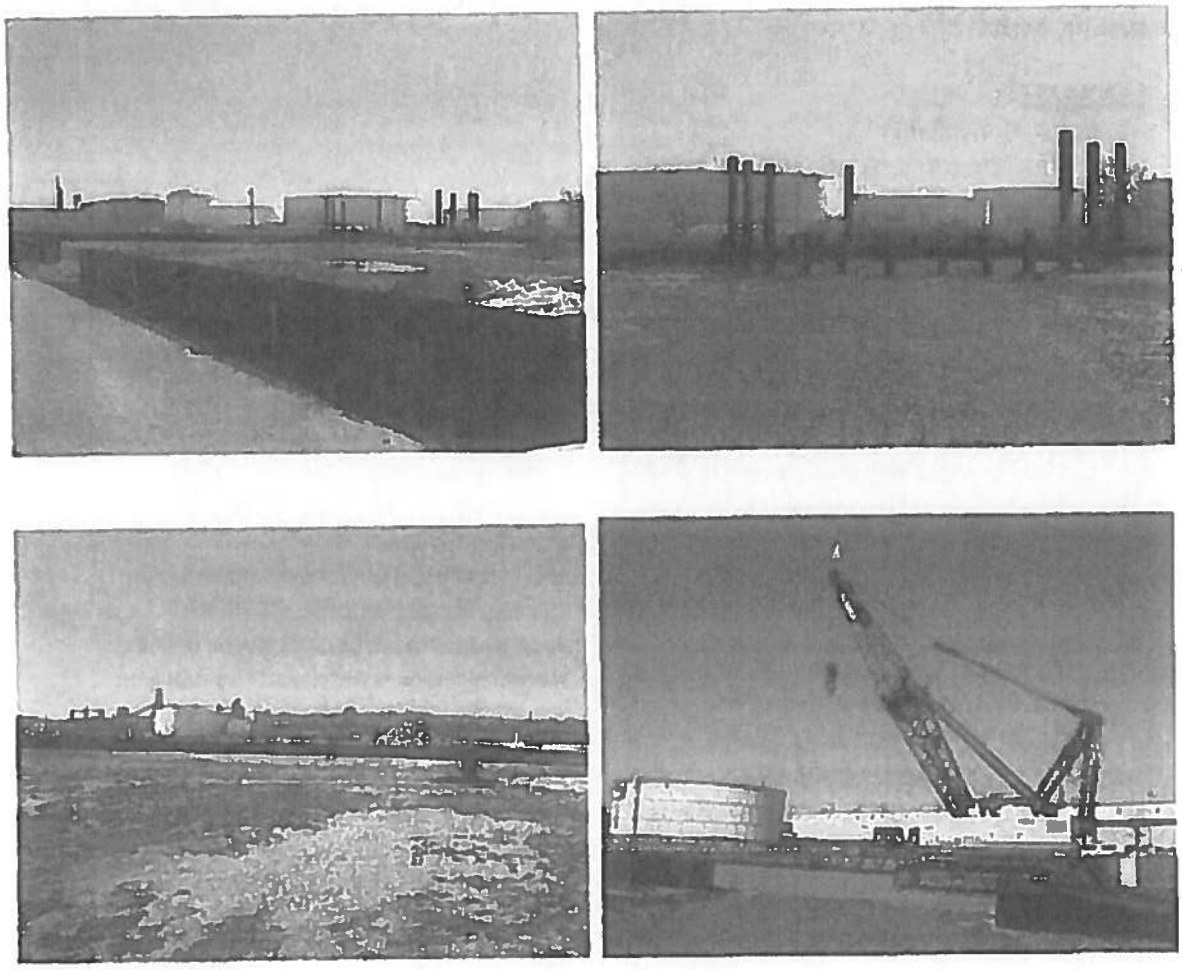
BACKGROUND:
On August 6, 2010, Energy Answers received a permit to construct from the Maryland Public Service Commission (PSC) (CPCN #9199) for the construction of a 120 MW renewable energy power plant at the old FMC location in Fairfield, MD (Baltimore City). On December 10, 2012, the PSC granted Energy Answers' motion to extend the deadline to begin construction of the Fairfield Renewable Energy Project by eighteen (18) months (until August 6, 2013). On August 6, 2013, the Department received a letter dated August 6, 2013 via email from Michael McNerney, Vice President of Energy Answers Baltimore LLC, stating that construction of the Fairfield Renewable Energy Project has commenced. On September 12, 2013, MDE confirmed that construction did begin. On November 1, 2013, MDE confirmed that all 32 pilings for the stack foundation were in place.

INSPECTION NOTES:
On February 28, 2104, the Department conducted a site inspection of the Fairfield facility to determine the status of the construction on the Fairfield Renewable Energy Project. Mr. Kevin Jones, a consultant for Energy Answers, stated that "no additional for has been performed at the site since my [MDE's] last inspection [November 1, 2013].

During the February 28, 2014 inspection, no construction workers were onsite and no construction work was being performed. Mr. Jones could not give us any additional information on what will be Energy Answers' next step in the construction project and suggested that the Department contact Mr. Michael McNerney if we wanted more information.

Mr. Jones was informed that Energy Answers needs to have continuous construction at the site and it was requested that he notify his corporate office on my site inspection that was conducted today.

INSPCTION PICTURES:



Photos were taken on February 28, 2014. The site looks exactly as it did during MDE's last site inspection of November 1, 2013.

STATE OF MARYLAND
DEPARTMENT OF THE ENVIRONMENT
AIR AND RADIATION MANAGEMENT ADMINISTRATION

INSPECTION AND OBSERVATION / AFS POINT ACTION

Baltimore City — COUNTY
Energy Answers Baltimore LLC — FACILITY NAME
AFS No. : 24-510-3532
MDE AI : 67286

ADDRESS 1701 E Patapsco Ave , Curtis Bay, MD 21226

DATE OF INSPECTION 06/03/2015

ANNOUNCED ☐ UNANNOUNCED ☒

ARRIVAL TIME 9:00 AM ☒ PM ☐

DEPARTURE TIME 9:45 AM ☒ PM ☐

INSPECTOR NAME Lang, Steve - Y60

ACTION TYPE / RESULT CODE
PS - Partial Compliance Evaluation – On Site 06/03/2015
47 - Discuss Modification/Construction

FACILITY CONTACT Kevin Jones
NAME

TELEPHONE NO.

AIR PROGRAM
0-SIP Source
6-PSD
7-NSR

TEMPERATURE 65 F	WEATHER	WIND DIRECTION calm	WIND SPEED 0-3 mph
☐ HOT ☐ COLD	☐ CLEAR ☒ OVERCAST	N	☒ CALM ☐ MODERATE
☒ MODERATE	☐ RAIN/SNOW ☐ PARTLY CLOUDY	W + E	☐ LIGHT ☐ STRONG
		S	

DISCUSSION:

2015 June 3 - Site Inspection
Verification of Construction

On June 3, 2015, the Department conducted a site inspection of the Energy Answers Fairfield site. The purpose of the inspection was to determine the status of the construction of their Fairfield Renewable Energy Project.

Energy Answers received a permit from the Maryland Public Service Commission (PSC) (CPCN #9199) on August 6, 2010 for the construction of a 120 MW renewable energy power plant at the Fairfield, MD location in Baltimore City. Energy Answers requested and was granted by the PSC on December 10, 2012 an extension of 18-months to begin construction of the Fairfield Renewable Energy Project. In the extension, Energy Answers was given until August 6, 2013 to commence construction of the Fairfield Renewable Energy Project.

During the June 3, 2015 Energy Answers site inspection, it was observed that the company has not performed any additional construction work on-site since MDE's last inspection of February 28, 2014. Mr. Kevin Jones stated that as soon as MDE issues the permit to construct for the concrete crusher, they will begin crushing the concrete that is located on-site. The concrete will be use in the construction of the raised foundation for the plant building.

See attached report for additional information and pictures.

Inspector Signature — Date 6/4/15

R Hall — Supervisor Signature — Date 6/4/15

AFS COMMENT: Construction verification status

ATTACHED SPECIFIC INSPECTION FORMS

ARMA-34

(REVISED 05-27-10)

Energy Answers Baltimore, LLC
1701 East Patapsco Ave
Baltimore, MD 21226

Facility # 510-3532
AI # 67286

CONTACT:
Kevin Jones, Consultant
Email: kjones@energysanswers.com
Phone: (443) 602-3750 Cell: (443) 602-3751

Inspection Date: June 3, 2015
Inspector: Steve Lang, ARMA Compliance Program

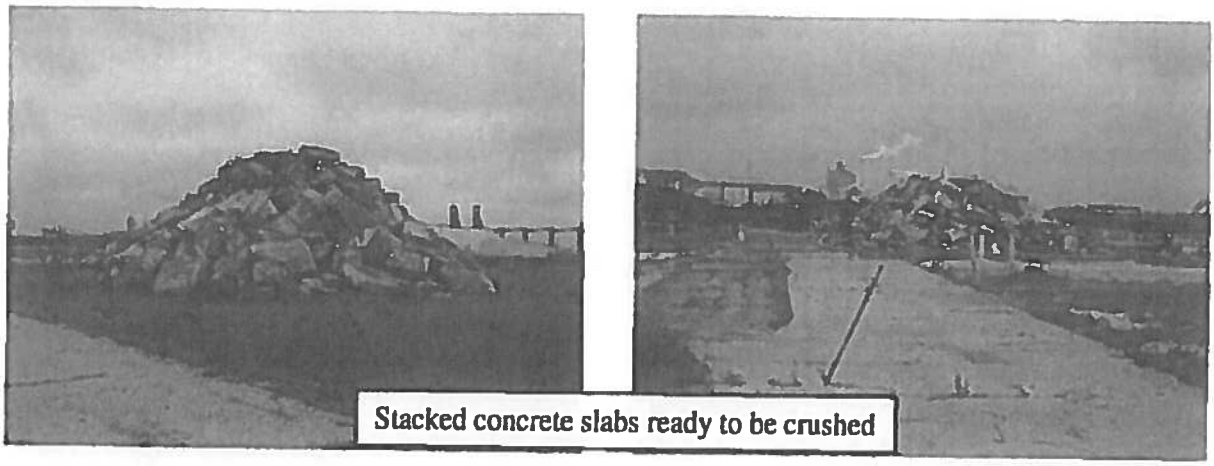
INSPECTION FINDINGS:
During the June 3, 2015 Energy Answers site inspection, it was observed that the company has not performed any additional construction work on-site since MDE's last inspection of February 28, 2014. Mr. Kevin Jones stated that as soon as MDE issues the permit to construct for the concrete crusher, they will begin crushing the concrete that is located on-site. The concrete will be use in the construction of the raised foundation for the plant building.

BACKGROUND:
On August 6, 2010, Energy Answers received a permit to construct from the Maryland Public Service Commission (PSC) (CPCN #9199) for the construction of a 120 MW renewable energy power plant at the old FMC location in Fairfield, MD (Baltimore City). On December 10, 2012, the PSC granted Energy Answers' motion to extend the deadline to begin construction of the Fairfield Renewable Energy Project by eighteen (18) months (until August 6, 2013). On August 6, 2013, the Department received a letter dated August 6, 2013 via email from Michael McNerney, Vice President of Energy Answers Baltimore LLC, stating that construction of the Fairfield Renewable Energy Project has commenced. On September 12, 2013, MDE confirmed that construction did begin with the installation of steel pilings for the Plant's stack. On November 1, 2013, MDE confirmed that all 32 pilings for the stack foundation were in place. The company stated that the removal of the pile driving rig in March 2014 completed Phase I of the Plant's construction project. Phase II of the construction project will begin with the construction of the raised foundation for the plant building.

INSPECTION NOTES:
During the June 3, 2015 inspection, no construction workers were onsite and no construction work was being performed. Mr. Jones stated that Phase II of the construction process will begin with the crushing of concrete from the stock piles left on-site from the FMC plant demolition. The concrete will be used for the construction of a four foot raised foundation for the plant building.

Mr. Jones showed MDE the seven (7) piles of broken concrete (see photos attached) and one (1) pile of red bricks that will be crushed and used for the raised foundation. Four (4) of the concrete piles and the brick pile are located on the portion of the facility that the waste-to-energy plant will be constructed on. The three (3) other concrete piles are located across the street (E. Patapsco Ave.) from the Facility's main entrance. Mr. Jones stated that there is about 10,000 cubic feet of concrete on-site that will be crushed. He also stated that the raised foundation will require way more concrete than is currently located on-site. Mr. Jones stated that the crusher will be moved around the facility grounds and placed next to each concrete pile. The concrete will be crushed and dropped directly into dump trucks than hauled to an area where plant's future stack will be located. A silt fence is already in place around this area.

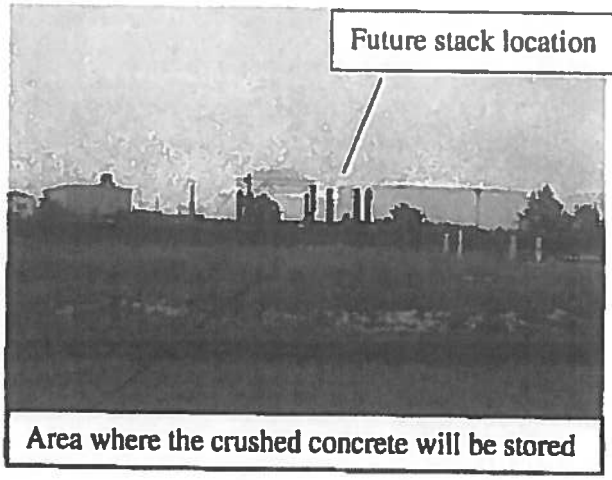
INSPCTION PICTURES:



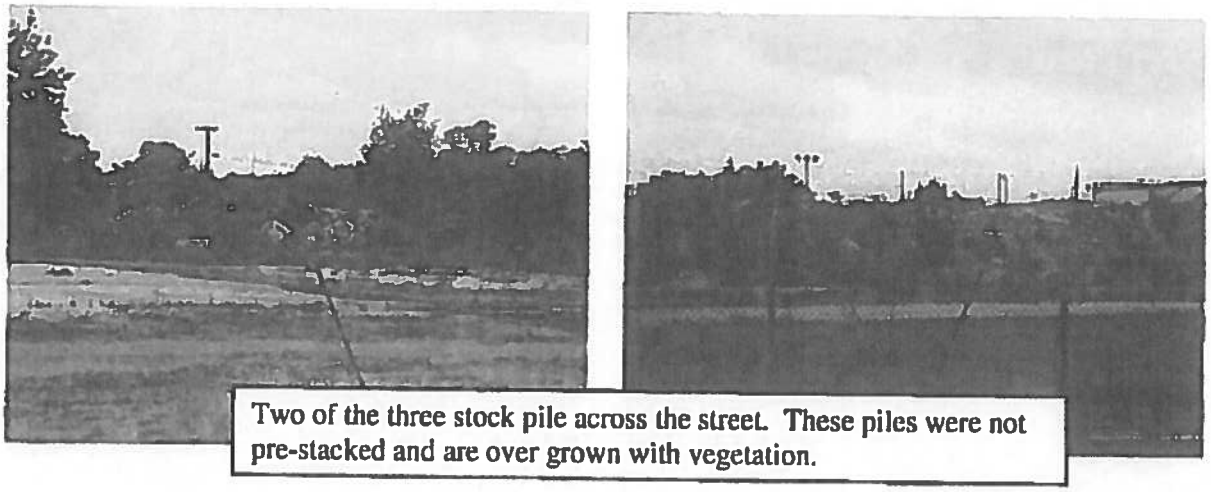
Stacked concrete slabs ready to be crushed

Red bricks from FMC's old stack are stocked piled behind this concrete pile

Future stack location

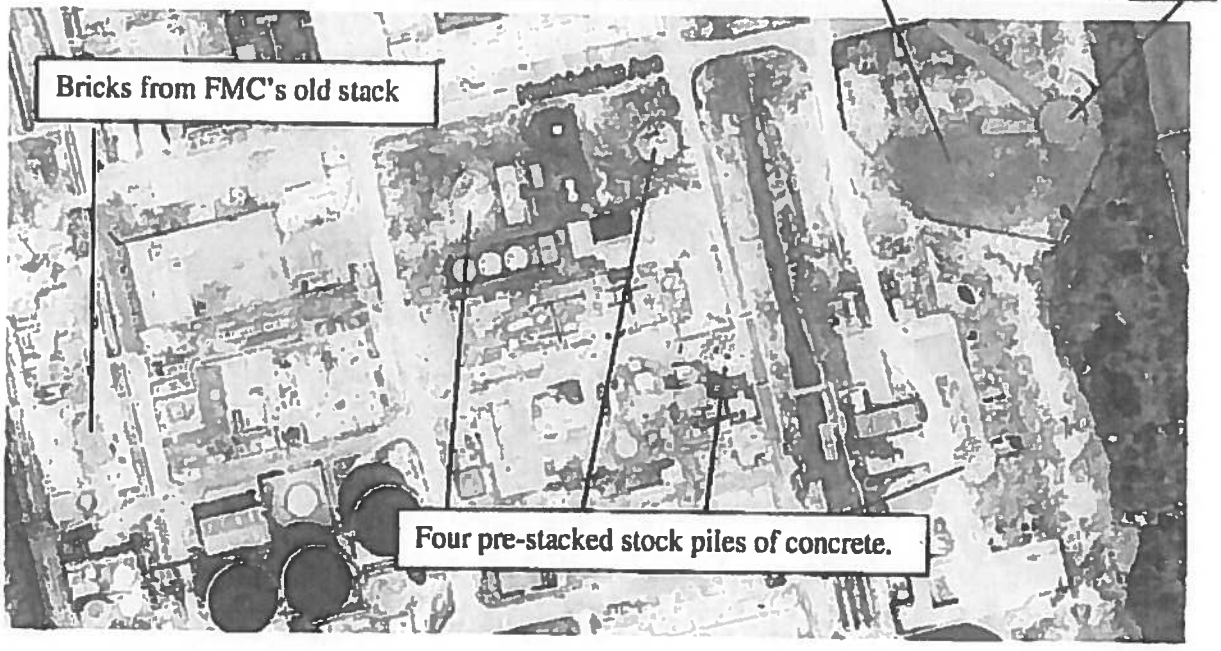


Area where the crushed concrete will be stored



Two of the three stock pile across the street. These piles were not pre-stacked and are over grown with vegetation.

Photos were taken on June 3, 2015



An aerial photo of FMC's plant after its demolition.

ATTACHMENT C

RR

STOP
STOP
R
R

ATTACHMENT D

EnergyAnswers Baltimore

Ms. Karen G. Irons – Program Manager / Air Quality Permits Program
Maryland Department of the Environment
Air and Radiation Management Administration
1800 Washington Blvd.
Baltimore, Maryland 21230

August 6, 2013

Dear Ms. Irons:

Energy Answers Baltimore LLC (EAB) commenced construction of the Fairfield Renewable Energy Project, located at the site owned by FMC Corporation at 1701 East Patapsco Avenue in the City of Baltimore, on August 6, 2013. The initial construction work consists of the driving of piles that will support the project's stack, as described in the attached *Scope of Work for Phase 1 Construction*. Specific work commenced on August 6 includes the following:

- Initial contractor site safety orientation.
- Construction survey layout by KCI Technologies.
- Construction of a stone and gravel entrance for heavy construction equipment and construction of a gravel road for the track mounted pile driving rig by Central Maintenance Corp.
- Mobilization of the pile driving rig to the site by Midlantic Piling Inc.
- Delivery of site safety and sanitary facilities.

EAB will keep the Department apprised of ongoing construction activities through regular status reports.

Sincerely,

ENERGY ANSWERS BALTIMORE, LLC

Michael McNerney, P.E.
Vice President

CC: Angelo J. Bianca

Energy Answers Baltimore, LLC
MARYLAND: 1701 East Patapsco Avenue • Baltimore • MD • 21226 • Phone: 443 602 3750 • Fax: 443 602 3780
NEW YORK: 79 North Pearl Street • Albany • NY • 12207 • Phone: 518 434 1227 • Fax: 518 436 6343

Fairfield Renewable Energy Project

Scope of Work for Phase 1 Construction

The Fairfield Renewable Energy Power Plant is composed of a number of buildings and structures (Figures 1, 2). Of those buildings and structures, five hold heavy concentrated loads, vibrating or large rotating equipment, or high structures with large imposed wind loads. Those buildings and structures require deep foundations. Phase 1 of the Initial Construction work consist of driving thirty-two piles to support the imposed loads from the Stack and its foundation.

Sediment and Erosion Control:

The sediment and erosion control measures involve the erection of 945 linear feet of silt fence (Figure 4). The installation calls for digging an 8" deep by 3" wide trench to bury the bottom edge of the fence to prevent underflow. This work will be performed by Central Maintenance.

Displaced soil will be handled, stockpiled and sampled in accordance with the FMC Soil Management Plan and Stockpile Sampling Procedure. Potomac Environment Inc. will be used to conduct field stockpile sampling, and Test America will perform the required laboratory analysis.

The Stack:

The support structure for the deep foundation of the Stack for the Power Plant consists of 32 steel H piles. The piles will be driven at approximately 67" on center (Figure 3). The design depth of the piles is 35 feet. To achieve the required capacity, 55 foot piles will be used, and in-field dynamic load testing will be done to verify that the capacity is achieved. Piles will then be cut to prepare for subsequent pile caps and foundations.

A now defunct 4" pressure sewer from the old project trailer area lies within the pile field. That pipe has been previously located and the installed piles will straddle that line. However, the sewer line will be plugged inside Plant manhole 63. Although precautionary, this work will ensure that this line, if compromised by piling, will not affect the subsurface conditions and the integrity of future pile caps or foundations. Every effort will be made to execute this work without vessel entry. In the event vessel entry is needed, a confined space trained crew (Central Maintenance) will perform the repair.

Pile Installation:

Steel H piles are not displacement type piles, therefore spoils generation will be minimal. No soil excavation for pile work will take place. The piling rig requires no platforms or grade prep work (see photo 1). In the case of a failed pile, it will be cut off 2-3" above the prevailing grade, and abandoned in-place. No pile extraction will take place. No soil will be disturbed while driving piles. In the event that soil *is* disturbed, it will be handled in accordance with FMC's Soil Management and Sampling Plans.

Both the site work contractor (Central Maintenance) and the piling contractor (Midlantic Piling) will have HAZWOPER trained crews while on site. Piling operations will start in Level D PPE with periodic (every 10-minutes) air monitoring throughout the day. If indicated by air monitoring, the crews will shift to Level C PPE.

Work Tasks:

- Field work duration: 8 weeks
- Conduct on-site and off-site utility sweeps
- Erect sediment and erosion control, and construction entrance measures
- Plug defunct 4" underground sewer in manhole 63.

The tasks that each contractor will perform as part of this Work:

- Underground utility sweeps:
  - Miss Utility -- off plant (Nation-wide One Call system)
  - Private Utility Locating Service (PULS) -- on plant
- Site Support, Sediment and Erosion Control, Manhole Confined Space Entry
  - Central Maintenance Corp.
- Piling
  - Midlantic Piling Inc.
- Surveying and layout
  - KCI Technologies
- Environmental Contractors
  - Potomac Environmental, Inc. – Soil sampling
  - EQ Northeast, Inc. – Air and Noise monitoring
  - Test America – Soil analysis lab tests
- Field Engineering
  - DW Kozera, Inc. – Pile design, dynamic loading and wave analysis, geotechnical
  - McLaren Engineering Group, Inc. – Structural engineering
  - Hardin Kight Associates, Inc. – Pile inspection and documentation

PHOTO 1
Pile Driving Rig

Midlantic will use an 80-ton track mounted crawler crane for the pile driving operation. The crane will remain on site during the entire period piles are being driven.

FIGURE 1

Overall Site Plan

[05] 0001 - C = 0697-GA001 - Site Plan PDF

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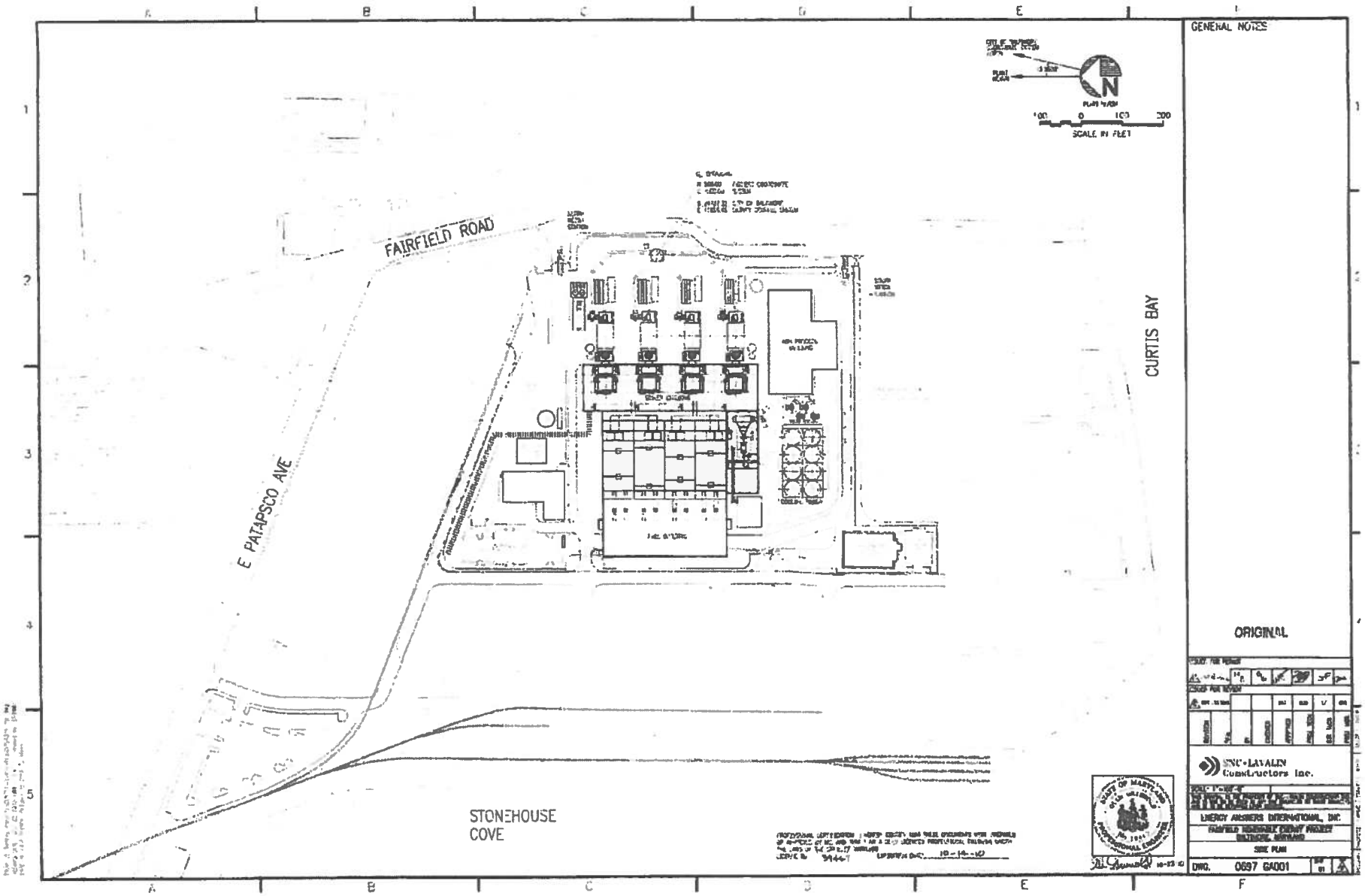
FAIRFIELD ROAD
E PATAPSCO AVE
CURTIS BAY
STONEHOUSE
COVE
SCALE IN FEET
GENERAL NOTES
ORIGINAL
SNC-LAVALIN
Constructors Inc.
ENERGY ANSWERS INTERNATIONAL, INC.
SITE PLAN
DWG. 0697 GA001

FIGURE 2

General Arrangement Power Plant Site

[06] 0697 GA002 Sht 001 Rev. D.PDF

(next page)

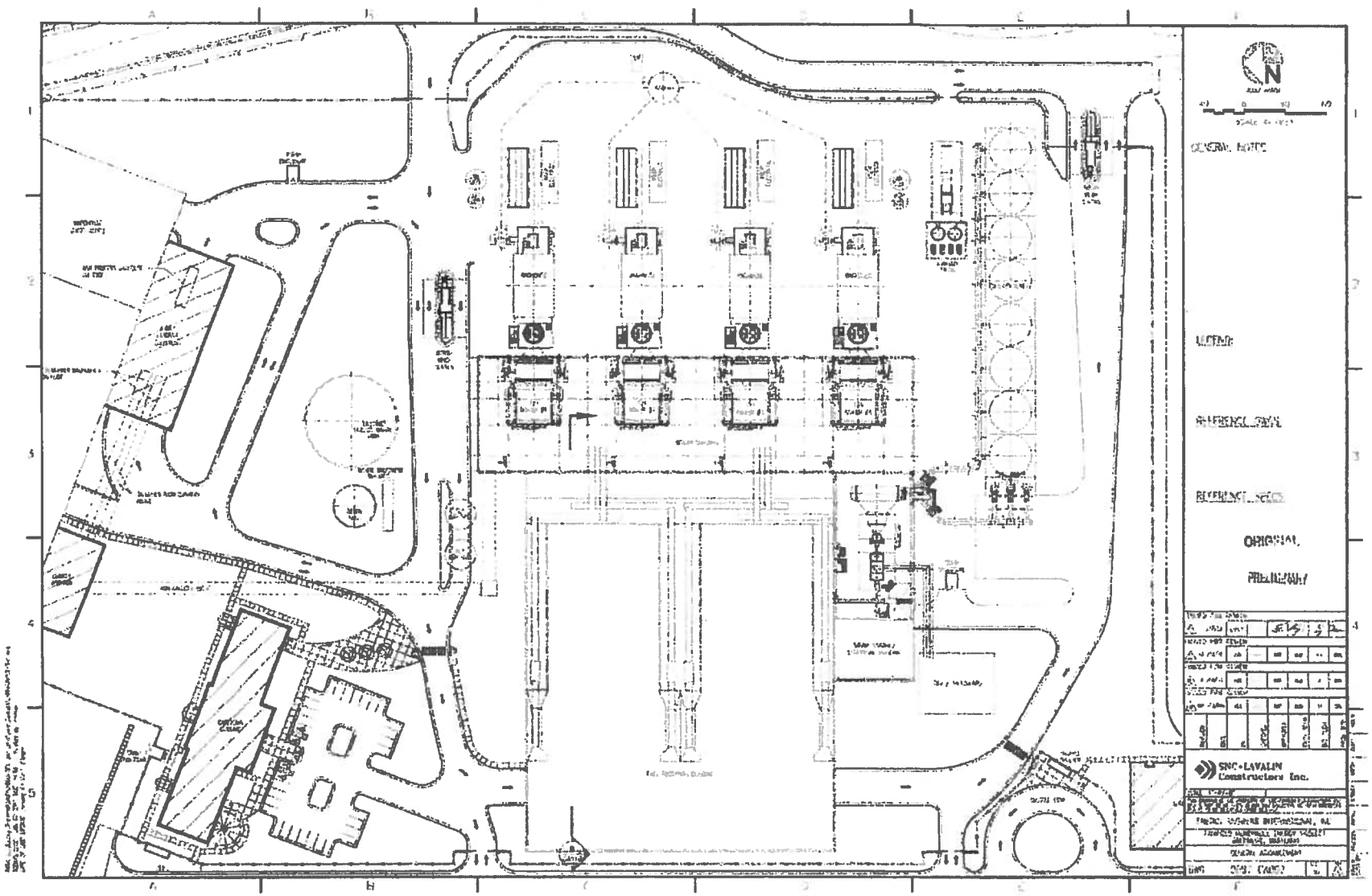
N
GENERAL NOTE
ORIGINAL
PRELIMINARY
SNC-LAVALIN Constructors Inc.

FIGURE 3

Stack Piling Layout

[04] 0004 - S = 0697-F\002 - Piling Plan.PDF

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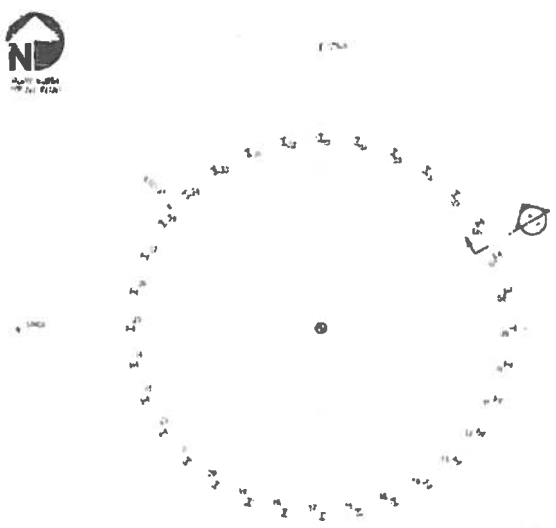


DETAIL 1

PILE DETAIL

GENERAL NOTES

1. [illegible]

2. [illegible]

3. [illegible]

4. [illegible]

5. [illegible]

6. [illegible]

7. [illegible]

8. [illegible]

9. [illegible]

10. [illegible]

11. [illegible]

ENERGY ANSWERS INTERNATIONAL, INC

PROPOSED RENEWABLE ENERGY PROJECT

BALTIMORE, MARYLAND

PILING PLAN

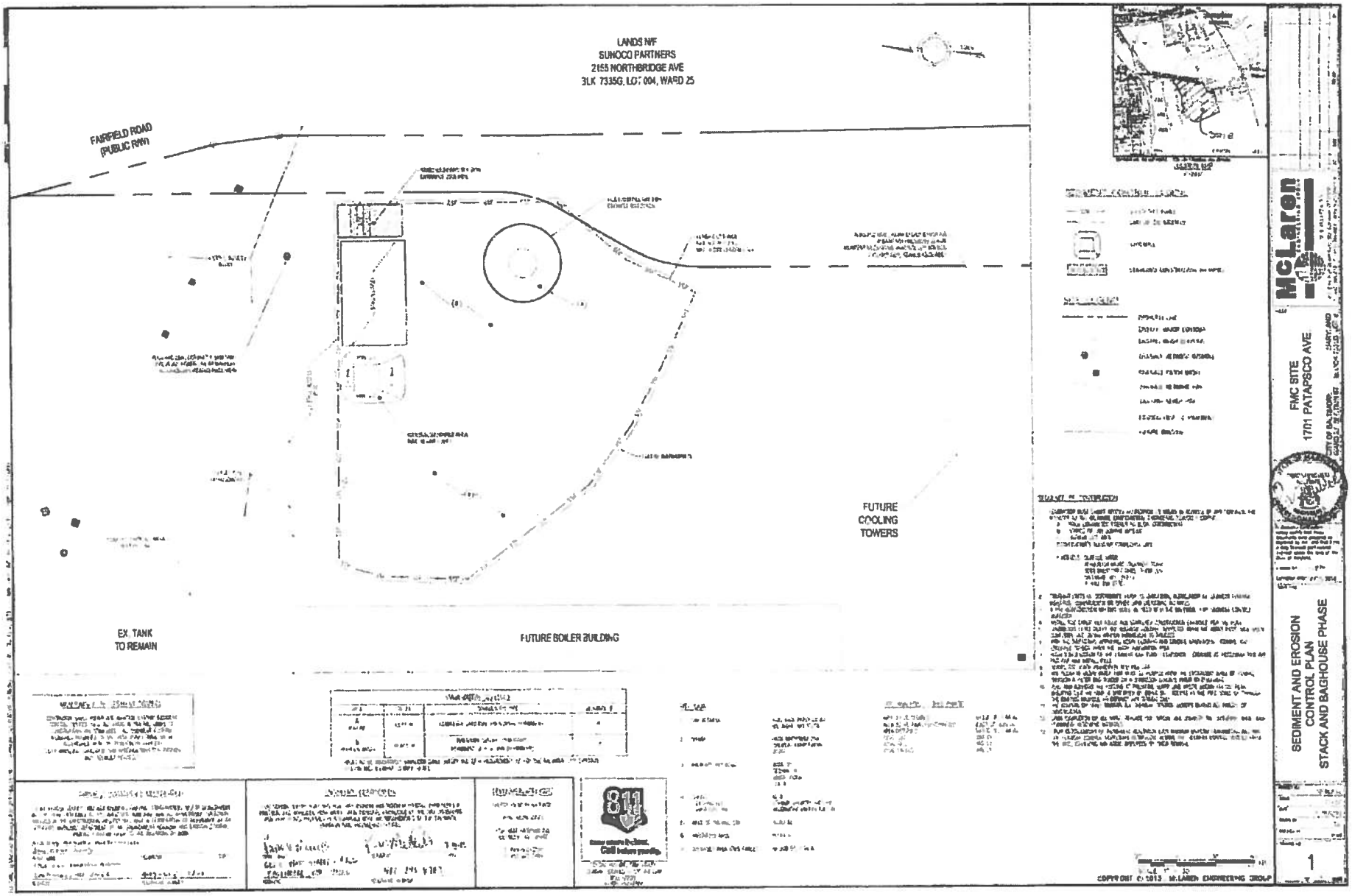
DWG: 0697 F002

FIGURE 4

Sediment & Erosion Control Layout

[11] 0007 - C = 1-Sediment and Erosion Control Plan Stack and Baghouse Phase pdf

(next page)


LANDS NF
SUNOCO PARTNERS
2155 NORTHBRIDGE AVE
3LK 7335G, LOT 004, WARD 25
FAIRFIELD ROAD
(PUBLIC RAW)
FUTURE
COOLING
TOWERS
EX. TANK
TO REMAIN
FUTURE BOILER BUILDING
811
Know what's below.
Call before you dig.
McLaren
FMC SITE
1701 PATAPSCO AVE.
SEDIMENT AND EROSION
CONTROL PLAN
STACK AND BAGHOUSE PHASE
1
COPYRIGHT © 2013 McLAREN ENGINEERING GROUP

ATTACHMENT E

MARYLAND

Karen Irons -MDE- <karen.irons@maryland.gov>

Energy Answers - Chronology

1 message

Steven Lang -MDE- <steven.lang@maryland.gov> Wed, Jun 11, 2014 at 10:05 AM
To: Roberta James -MDE- <roberta.james@maryland.gov>, Bill Paul -MDE- <bill.paul@maryland.gov>, Karen Irons - MDE- <karen.irons@maryland.gov>

Bobbie

Here is a chronology for Energy Answers

Steven Lang
Air Quality Compliance Program
Air and Radiation Management Administration
Maryland Department of the Environment
1800 Washington Blvd.
Baltimore, MD 21230-1720
410-537-4225, 410-537-3202(fax)

Energy Answers Cronology.docx
16K

Energy Answers Baltimore, LLC
Fairfield Renewable Energy Facility
Chronology

August 6, 2010	EA receives a CPCN (Case No. 9199) for the construction of a 120 MW generating facility known as the Fairfield Renewable Energy Facility located at 1701 E. Patapsco Ave, Baltimore, MD 21226. The facility would consist of four (4) - 450 MMBtu/hr boilers each designed to combust 1,000 tpd of Waste-derived Fuel to generate electricity and steam. • CPCN Condition A-2 states that the CPCN does not serve as the PSD and NSR approval or the air quality construction permit until such time as EA has provided documentation demonstrating that emission offsets have been obtained and approved by MDE-ARMA.
December 10, 2012	PSC granted EA an extension on the construction start date for the Facility. EA is given until August 6, 2013 to commence construction of the facility.
August 5, 2103	EA sends ARMA a letter providing documentation that the emission offsets have been obtained. Note: EA's letter does not mention that they purchased the option to buy the emission offsets vs. purchasing the offsets out right.
August 5, 2013	ARMA sends EA a letter stating that the company has met the requirements of Condition A-2 of their CPCN.
August 6, 2013	EA sends MDE a letter stating that construction of the facility commenced on August 6, 2013 with the driving of piles for the Facility's stack.
September 12, 2013	ARMA conducts a site inspection at the facility to verify that construction had indeed commenced. ARMA confirms that construction had begun with the driving of 15 piles for the Facility's stack.
November 1, 2013	ARMA conducts a site inspection at the facility and verifies that all 32 piles for the stack were installed by October 31, 2013, thus completing Phase I of the construction project. No new or additional construction work has begun at the facility.

Energy Answers Baltimore, LLC
Fairfield Renewable Energy Facility
Chronology

February 28, 2014	ARMA conducts a site inspection at the facility and verifies that no additional construction activities have been performed at the facility since October 2013 or the last inspection.
March 12, 2014	ARMA sends EA as letter requesting that quarterly construction status reports be submitted to ARMA starting with the 1st quarter 2014.
March 31, 2014	1st Quarter 2014 construction status report received. Reports states that the company completed Phase I of the construction in October 2013 and prior to starting Phase II, they are working on a Project Execution Plan (PEP) to ensure compliance with RCRA requirements.
June 2, 2014	SASOL send a letter to MDE notifying the Department that the call option agreement with EA for the SASOL emission reduction credits expired May 12, 2014.

ATTACHMENT F

GORDON·FEINBLATT LLC
ATTORNEYS AT LAW

TODD R. CHASON
410.576.4069
tchason@gfrlaw.com

233 EAST REDWOOD STREET
BALTIMORE, MARYLAND 21202-3332
410.576.4000
www.gfrlaw.com

July 31, 2014

VIA CERTIFIED AND ELECTRONIC MAIL
Roberta James
Assistant Attorney General
Maryland Department of the Environment
Office of the Attorney General
1800 Washington Blvd
Baltimore, MD 21230

Re: Opportunity to Resolve Claim for Civil Penalty – PSC Case No. 9199; Order No. 83517 issued August 6, 2010 Granting a CPCN to Energy Answers International, Inc. – Fairfield Renewable Energy Project

Dear Ms. James:

This letter is on behalf of Energy Answers Baltimore, LLC ("Energy Answers" or the "Company") in response to your letter dated June 19, 2014 regarding alleged air quality regulation violations and offering an opportunity to resolve this matter in advance of litigation.

As explained during the July 1st meeting and detailed below, an administrative lapse resulted in delayed notice to Sasol North America, Inc. ("Sasol") that Energy Answers intended to extend its option agreement on certain emission offsets through the full term of the contract to August 12, 2014. During the lapse, Sasol sold a portion of the subject credits and declined a continued option agreement on the remainder. However, Sasol subsequently agreed to a sale to Energy Answers of the required 7 tons of VOCs, and Energy Answers also arranged a purchase contract of the required NOx offsets with the holders of the Sparrows Point credits. As evidenced by the attached contracts, all of the required offsets have now been replaced, and no environmental harm has resulted.

As noted in your letter, Energy Answers did not execute the final call option before May 12, 2014 as required under the contract, but only learned that Sasol was actually declining to continue the option agreement on June 2, 2014. As soon as Energy Answers was aware of a lapse, it worked diligently to secure offsets from other sources. On July 7, 2014, Energy Answers signed deal confirmations for purchases of offsets with both Sparrows Point LLC and Sasol (see attached), which were provided to the Department by electronic mail on July 11th. Also attached are the executed contracts both dated July 31, 2014.

Title 2 of the Environment Article provides seven factors for consideration in assessing penalties. For the reasons set forth after each factor, Maryland law strongly counsels against a penalty under the circumstances of this case:

1. The willfulness of the violation, the extent to which the existence of the violation was known to the violator but uncorrected by the violator, and the extent to which the violator exercised reasonable care;

   - The violation was caused by an unintentional administrative error – a missed deadline for notice to extend that allowed Sasol to decline a continuation of the option in favor of a purchase agreement. Energy Answers immediately sought to re-secure the required offsets, and arranged for actual purchase agreements instead of more economical options, as these were able to be negotiated and secured most quickly.

2. Any actual harm to human health or to the environment, including injury to or impairment of the air quality or the natural resources of this State;

   - Because the Fairfield Renewable Energy Project is still in the construction phase and not yet operating, there was absolutely no harm of any kind to human health or the environment.

3. The cost of control;

   - The costs associated with purchasing the required ERCs to correct the violation will be [redacted] not including the additional costs necessary to maintain the existing ERC option agreements required under the permit.

4. The nature and degree of injury to or interference with general welfare, health, and property;

   - Because the Fairfield Renewable Energy Project is still under construction, there was absolutely no injury of any kind, or interference of any kind, with general welfare, health or property.

5. The extent to which the location of the violation, including location near areas of human population, creates the potential for harm to the environment or to human health or safety;

   - Because the Fairfield Renewable Energy Project is still under construction and the violation was strictly administrative and carried no consequences, caused no potential for harm to the

environment or to human health or safety and it location is irrelevant.

6. The available technology and economic reasonableness of controlling, reducing, or eliminating the emissions that caused the violation; and

   - The violation was not caused by emissions and was strictly administrative in nature. However, Energy Answers has expended significant financial resources to re-secure control of the required ERCs.

7. The extent to which the current violation is part of a recurrent pattern of the same or similar type of violation committed by the violator.

   - Energy Answers has had no prior violations under its CPCN permit and has consistently endeavored to remain in compliance and maintain active communications with MDE.

Md. Code. Ann., Env. § 2-610.1(c). Each of these factors mitigates against penalizing Energy Answers for the alleged violations.

Further, as instructed by the Department, Energy Answers halted all construction activities while the emissions offsets were re-secured.

As more fully detailed in Energy Answers' quarterly report, several construction and related activities are planned for the coming months. Concrete crushing and grading will begin to prepare for installation of the facility's foundation, and additional construction access roads will be improved, potentially in conjunction with use of a portion of the site for vehicular storage currently being negotiated.

For these reasons, we respectfully request that the Department decline to assess a penalty against Energy Answers. If you have any questions or require additional information please do not hesitate to contact me.

Very truly yours,

Todd R. Chason

tc
Enclosures
cc: Frank Courtright, MDE
Angelo Bianca, MDE
Karen Irons, MDE
Steve Lang, MDE
David J. Collins, Executive Secretary, Public Service Commission
Patrick Mahoney, Energy Answers

SPOT AGREEMENT FOR
THE PURCHASE AND SALE OF EMISSION REDUCTION CREDITS

This Spot Agreement for the Purchase and Sale of Emission Reduction Credits ("Agreement") is entered into by and among HRE Sparrows Point, LLC ("HRE"), Sparrows Point, LLC ("SPLLC" and together with HRE, "Seller"), and Energy Answers Baltimore Holdings, LLC ("Buyer" and together with Seller, the "Parties") as of July 31, 2014, ("Effective Date").

WHEREAS:

A. Seller has agreed to sell and Buyer agreed to purchase the ERC Product (as hereinafter defined).

B. Seller and Buyer now wish to enter into this Agreement to set forth the terms upon which Seller agrees to sell to Buyer and Buyer agrees to purchase the ERC Product (as hereinafter defined) and such other matters are provided for herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties hereto, for themselves, their successors and assigns, hereby agree to the foregoing and as follows:

I. SELLER: HRE Sparrows Point, LLC ("HRE") and Sparrows Point, LLC ("SPLLC")

II. BUYER: Energy Answers Baltimore Holdings, LLC

III. CONTRACT QUANTITY/ERC PRODUCT/CONTRACT PRICE:

1. *Contract Quantity*: 62.75 NOx ERC Product

2. *ERC Product* means MD NOx ERCs from within Baltimore County, Maryland with an expiration date of January 1, 2015 or later.

3. *Unit Price*: [redacted] NOx ERC

4. *Total Price*: [redacted]

IV. CERTIFICATION & DELIVERY:

Upon full execution of this contract and full payment of the entire Total Price by Buyer as set forth in Section V below, Seller shall prepare and execute the Notice of Transfer as well as all other documents and instruments necessary and required by COMAR 26.11.17.06 to transfer the Contract Quantity of ERC Products to Buyer. The Parties agree to reasonably cooperate and provide whatever other documentation that the MDE may reasonably request in order to effectuate such transfer. "Delivery" of the ERC Product shall be deemed to have occurred as of the earlier of the date on which 1) both Buyer and Seller have received from the MDE a letter or other mutually acceptable documentation confirming the transfer of the Contract Quantity from Seller to Buyer ("Confirmation"), or 2) either Buyer or Seller has received such Confirmation and provided a copy to the other.

V. PAYMENT:

1. On or before August 1, 2014, Buyer shall wire funds equal to 10% of the Total Price into an escrow (the "Escrow") established by Seller with The Chicago Trust Company, N.A. (the "Escrow Agent") pursuant to that certain Escrow Agreement entered into between Escrow Agent and Seller dated July 31, 2014 (the "Escrow Agreement"). Thereafter Buyer shall pay by wiring to the Escrow, the following amounts on the following dates:

(a) [redacted] on or before each of August 8, September 2, October 1 and November 3, 2014;

(b) [redacted] on or before December 1, 2014.

In the event Buyer fails to make any of the payments set forth herein on or before the date required, and such failure is not remedied within three (3) Business Days after the date when due, this Agreement shall automatically terminate, Buyer shall have no further rights as to the ERCs and Seller shall retain all amounts previously paid by Buyer as liquidated damages.

2. If the Confirmed Quantity is less than the Contract Quantity, then Seller shall prepare and submit to Buyer an adjusted invoice reflecting the Contract Quantity actually delivered and an adjusted Total Price and Seller shall cause the Escrow Agent to remit to Buyer an amount equal to the difference between the Total Price and the Total Price as adjusted in Seller's invoice. Upon the Delivery, Buyer shall have no further claim to or interest in any of the funds on deposit in the Escrow which shall continue be held by Escrow Agent for the benefit of Seller consistent with the terms of this Agreement and the Escrow Agreement.

3. Provided that Buyer shall have paid the Total Price as set forth above, Seller shall use commercially reasonable best efforts to cause MDE to issue the Confirmation on or before January 15, 2015. If the MDE fails or refuses for any reason whatsoever to issue the Confirmation or in the event the ERCs do not become federally enforceable by such date, Seller shall direct the Escrow Agent to disburse the funds held in the Escrow to Buyer and, upon delivery thereof to Buyer, this Agreement shall terminate and the parties shall have no further liability to the other hereunder.

4. All payments by Seller to Buyer (if any) shall be made by wire to the account designated by Buyer in the Notice Contact Schedule, attached hereto as Attachment B, or as otherwise reasonably requested by Buyer.

5. SPLLC agrees that, in the event HRE, HRP Sparrows Point, LLC or any affiliate of Hilco Real Estate, LLC acquires the Property pursuant to that certain Purchase and Sale Agreement by and between SPLLC and HRP Sparrows Point LLC dated December 14, 2013, as amended, SPLLC shall, at the Closing of such sale provide its written direction directing the Escrow Agent to disburse funds in the Escrow to HRE. In the event the Closing does not take place, funds in the Escrow shall remain in Escrow until either:

(a) Both parties comprising the Seller provide a joint written direction indicating where funds in the Escrow should be disbursed or

(b) A court of competent jurisdiction issues a final and non-appealable order indicating that the funds in the Escrow are the property of one of the parties comprising Seller.

VI. DEFINITIONS:

1. "*Agreement*" has the meaning set forth in the first sentence of this Agreement.

2. "*Business Day*" means any day on which banks in New York, New York are not authorized or required by Requirements of Law to be closed, beginning at 6:00 a.m. and ending 5:00 p.m. local time in New York New York.

3. "*Buyer*" has the meaning set forth in Section II of this Agreement.

4. "*Confirmation*" has the meaning set forth in Section IV of this Agreement.

5. "*Confirmed Quantity*" means the quantity of ERC Product confirmed as having been transferred on the Confirmation.

6. "*Contract Quantity*" has the meaning set forth in Section III.1 of this Agreement.

7. "*Delivery*" has the meaning set forth in Section IV of this Agreement.

8. "*Effective Date*" has the meaning set forth in the first sentence of this Agreement.

9. "*ERC*" means a credit based on a Surplus, Permanent, Quantified and federally Enforceable emission reduction that is considered a reduction for the purpose of offsetting increased emissions of nitrogen oxides ("NOx"), volatile organic compounds ("VOCs"), sulfur oxides ("SOx"), and other criteria pollutants specified by law. One ERC has an assigned value of one ton per year ("tpy").

10. "*ERC Product*" has the meaning set forth in Section III.2 of this Agreement.

11. "*Escrow*" has the meaning set forth in Section V of this Agreement.

12. "*Imaged Agreement*" has the meaning set forth in Section VII.8 of this Agreement.

13. "*MDE*" means the Maryland Department of the Environment Air Quality Planning Program.

14. "*Notice of Transfer*" means a letter substantially in the form attached hereto as Attachment A, signed by the appropriate official representative on behalf of Seller, requesting the transfer of the Contract Quantity in the MDE ERC Registry from SPLLC to Buyer all as consistent with COMAR 26.11.17.06.

15. "*Seller*" has the meaning set forth in Section I of this Agreement. Wherever this Agreement requires the action of Seller, SPLLC shall take such actions as may be necessary to achieve the obligations of Seller hereunder. HRE agrees to provide assistance to SPLLC in order to achieve the obligations set forth herein of Seller.

16. "*Total Price*" has the meaning set forth in Section III.4 of this Agreement.

17. "*Unit Price*" has the meaning set forth in Section III.3 of this Agreement.

18. "*Property*" means the property commonly known as the former RG Steel site, Sparrows Point, Maryland, of which portions are owned by HRE and the remainder is owned by SPLLC which is presently under a contract to purchase with HRP Sparrows Point, LLC.

VII. OTHER TERMS:

1. *Seller's and Buyer's Warranty*: Seller warrants that at the time of delivery and transfer of ERCs hereunder that it has not promised, sold or otherwise transferred any right or claim to the ERCs governed by this Agreement; and each such ERC is free and clear of any liens or other encumbrances. Seller makes no warranties regarding whether such ERCs will be transferred to Buyer by the MDE or whether MDE would conclude that such ERCs meet any regulatory requirements. Buyer warrants that it shall use the ERCs only as offsets through a federally enforceable permit to construct, as per COMAR 26.11.17.06 or as otherwise permitted by applicable law.

2. *Taxes*: Seller represents and warrants that it has no actual knowledge of any current tax liability associated with the ERCs or this Agreement ("Current Tax Liability"). Buyer shall be responsible for any taxes imposed on the transaction contemplated herein by the United States of America, the State of Maryland or any jurisdictional subdivision of the State of Maryland on and after delivery of the ERCs to Buyer under this Agreement, including in respect of the establishment of Buyer's Registry account except for the following:

a. Any Current Tax Liability known to but not disclosed by Seller;

b. Any taxes based on or arising from the income, revenue or gross receipts or other receipts of Seller or any of its owners, agents, employees or affiliates.

3. *Assignment*: This Agreement is not assignable by either Party without the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld, conditioned, or delayed.

4. *Governing Law*: This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the State of Maryland, without regard to principles of conflicts of law.

5. *Representations of Corporate Authority to Contract*: As of the Effective Date, each Party hereby represents and warrants to the other Party through the Term of the Agreement as follows: (a) it has, and at all times during the Term will have, all necessary power and authority to execute, deliver and perform its obligations hereunder; (b) the execution, delivery and performance of the Agreement has been duly authorized by all necessary action and does not violate any of the terms or conditions of its governing documents, or any contract to which it is a party, or any law, rule, regulation, order, judgment or other legal or regulatory determination applicable to it; and (c) there is no pending or (to its knowledge) threatened litigation, arbitration or administrative proceeding that materially adversely affects its ability to perform its obligations under the Agreement.

6. *Confidentiality*: Except as provided herein, and except for those disclosures made to the MDE to effectuate the transfer of ERC contemplated hereunder, neither Party shall, without the other Party's prior express written consent, publish, disclose, or otherwise divulge the terms and conditions of this Agreement to any person at any time during the Term of this Agreement, except to its affiliates, attorneys, accountants, representatives, agents and employees who have a need to know related to the implementation of the Agreement and have agreed to be bound by confidentiality to the disclosing party. If required by any law, statute, ordinance, decision, order or regulation passed, adopted, issued, promulgated or requested by a court, governmental agency or authority having jurisdiction over a Party, that Party may release the information subject to this provision to the court, governmental agency or authority, as required or requested or may disclose it to accountants in connection with audits, provided that such Party has notified the other Party of the required disclosure and requested such court, governmental agency, authority or accountant to treat such information in a confidential manner and to prevent such information from being disclosed or otherwise becoming part of the public domain.

7. *Term*: The term of this Agreement shall be effective on and as of the Effective Date set forth above and shall continue in effect until each Party's obligations under this Agreement are satisfied.

8. *Limitation of Liability*. IN NO EVENT SHALL EITHER BUYER OR SELLER BE LIABLE TO THE OTHER FOR SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING LOSS OF PROFITS (EXCEPT TO THE EXTENT THAT ANY DIRECT DAMAGES INCLUDE AN ELEMENT OF PROFIT).

9. *Change of Law*: Immediately upon Buyer's receipt of documentation evidencing that the ERCs have been transferred to Buyer, the ERCs shall become the sole property and entitlement of Buyer. Should there occur any change in law, rule, or regulation governing the ERCs, or should any order of a court of applicable jurisdiction with respect to the ERCs issue an order or decree, in any such case prior to Buyer's receipt of documentation or other evidence from the MDE confirming that the ERCs have been transferred to Buyer free and clear of any third party claim, and such event shall have the effect of restricting or limiting the nature, use, quantity, quality, duration or transferability of the ERCs (other than ministerial modifications to existing law which do not affect in any material respect the ability of a party hereto to effectuate this sale transaction or the nature, quantity or quality of the ERCs) (a "Change of Law"), then Buyer's sole recourse and remedy with respect to such Change of Law shall be to terminate this Agreement upon written notice to Seller, and upon Buyer's exercise of said termination right, Seller shall return any and all amounts received from Buyer, and thereafter neither Buyer nor Seller shall have any further liability or obligation to the other. If a Change of Law occurs after Buyer's receipt of such evidence that the ERCs

have been transferred to Buyer as aforesaid, then Buyer shall have no recourse or remedy against Seller to avoid completing the purchase of the ERCs pursuant to this Agreement solely by reason of such Change of Law.

10. *Dispute Resolution*: Any dispute between the Parties arising under or pertaining to this Agreement shall be referred to representatives of the Parties for informal dispute resolution discussions as soon as practicable. In the event that the designated representatives do not reach a mutually acceptable resolution of the dispute within thirty (30) days of such referral, then the Parties may agree to submit such dispute to mediation or other dispute resolution process as may be agreed upon by the Parties. If the dispute is not resolved within ninety (90) days from the date of such submission for mediation or other dispute resolution process, either Buyer or Seller may bring an appropriate action at law or in equity with a federal court of competent jurisdiction located in the State of Maryland. Nothing herein shall prevent either Buyer or Seller from bringing an action in equity to seek injunctive relief, if necessary to avoid irrevocable harm.

11. *Miscellaneous*: This Agreement shall completely and fully supersede all other understandings or agreements, both written and oral, including any term sheet or confirmation, between the Parties relating to the subject matter hereof. The Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both of the Parties to the Agreement. This Agreement may be executed in several counterparts, each of which is an original and all of which constitute one and the same instrument. Any original executed copy of this Agreement or other related document may be photocopied and stored on computer tapes and disks ("Imaged Agreement"). If an Imaged Agreement is introduced as evidence in any judicial or administrative proceedings, it shall be considered as admissible evidence. Neither Party shall object to the admissibility of the Imaged Agreement on the basis that such was not originated or maintained in documentary form under the hearsay rule, the best evidence rule or other rule of evidence. Except as expressly set forth herein, nothing herein shall be interpreted or construed to reflect any agreement by and between Sellers relative to ownership of ERCs issued by MDE relative to the Property; Sellers do not waive their respective claims of ownership of the ERCs relating to the Property.

[signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date set forth above.

Energy Answers Baltimore Holdings, LLC

By: _____

Name: Patrick F. Mahoney, P.E.

Title: President

HRE Sparrows Point, LLC

By: _____

Name: _____

Title: _____

Sparrows Point, LLC

By: _____

Name: MICHAEL J ROBERTS

Title: MEMBER

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date set forth above.

Energy Answers Baltimore Holdings, LLC

By: _____

Name: Patrick F. Mahoney, P.E.

Title: Presedent

HRE Sparrows Point, LLC

By: _____

Name: Ian Fredericks

Title: VP & Assistant General Counsel, Managing Member

Sparrows Point, LLC

By: _____

Name: _____

Title: _____

Attachment A

FORM OF NOTICE OF TRANSFER

Deputy Program Manager
Air Quality Planning Program
Maryland Department of the Environment
1800 Washington Boulevard, Suite 730
Baltimore, MD 21230

Re: Transfer of NOx Emission Reduction Credits from [HRE Sparrows Point, LLC/Sparrows Point, LLC] to Energy Answers Baltimore Holdings, LLC

Dear _____:

Energy Answers Baltimore Holdings, LLC ("Buyer") has entered into an agreement to purchase from HRE Sparrows Point, LLC and Sparrows Point LLC (collectively "Seller") 62.75 ton per year of NOx Emission Reduction Credits ("ERCs") from the former RG Steel facility, located in Baltimore County, Maryland, which have an expiration date of _____. The ERCs will be for internal use by the Buyer. Please revise the Maryland Department of the Environment ERC Registry to reflect this transfer.

Seller's representative for this matter and relevant contact information as follows:

Roberto Perez
HRE Sparrows Point, LLC
5 Revere Drive
Northbrook, IL 60062
847-418-2071

Michael Roberts
Sparrows Point, LLC
1650 Des Peres Rd. – Suite 303
Saint Louis, MO 63131
314.835.1515

Buyer's representative for this matter and relevant contact information as follows:

Sean Mahoney
Energy Answers Baltimore Holdings, LLC
c/o Energy Answers International, Inc.
79 North Pearl Street
Albany, NY 12207

Please send acknowledgement of this letter and of the ERC transfers to the representatives of both Buyer and Seller as indicated above. In addition, if you have any questions or require further information, please contact Seller's representative at the number referenced above.

Thank you for your prompt attention to this matter.

Respectfully,

Attachment B

NOTICE CONTACT SCHEDULE

Escrow:

[Bank]
[address]
ABA: _____
[Energy Answers Baltimore Holdings, LLC]
Account Number: _____

Notices to Buyer:

Energy Answers Baltimore Holdings, LLC
c/o Energy Answers International, Inc.
79 North Pearl Street
Albany, NY 12207
Attention: Sean Mahoney
Phone: (518) 434-1227
Email: smahoney@energyanwers.com

Notices to Seller:

HRE Sparrows Point, LLC
5 Revere Drive
Northbrook, IL 60062
Attention: Roberto Perez
Phone: (847) 418-2071
Email: RPerez@hilcoglobal.com

Sparrows Point, LLC
1650 Des Peres Road, Suite 303
Saint Louis, MO 63131
Attention: Michael Roberts
Phone: (314) 835-1515
Email:

ATTACHMENT G

HRE Sparrows Point, LLC
5 Revere Drive, Suite 206
Northbrook, Illinois 60062

December 10, 2014

David P. Mummert
Air Quality Permits Program
Maryland Department of the Environment
1800 Washington Boulevard, Suite 730
Baltimore, MD 21230

Re: Transfer of NOx Emission Reduction Credits from HRE Sparrows Point, LLC to Energy Answers Baltimore, LLC

Dear Mr. Mummert:

Energy Answers Baltimore, LLC ("Buyer") has entered into an agreement to purchase from HRE Sparrows Point, LLC and Sparrows Point LLC (collectively "Seller") 62.75 ton per year of NOx Emission Reduction Credits ("ERCs") from the former RG Steel facility, located in Baltimore County, Maryland, which have an expiration date of September 14, 2022. The ERCs will be for internal use by the Buyer. Please revise the Maryland Department of the Environment ERC Registry to reflect this transfer.

Seller's representative for this matter and relevant contact information as follows:

Roberto Perez
HRE Sparrows Point, LLC
5 Revere Drive
Northbrook, IL 60062
847-418-2071

Buyer's representative for this matter and relevant contact information as follows:

Sean Mahoney
Energy Answers Baltimore, LLC
c/o Energy Answers International, Inc.
79 North Pearl Street
Albany, NY 12207

Please send acknowledgement of this letter and of the ERC transfers to the representatives of both Buyer and Seller as indicated above. In addition, if you have any questions or require further information, please contact seller's representative at the number referenced above.

Thank you for your prompt attention to this matter.

Respectfully,

Ian Fredericks
VP & Assistant General Counsel, Managing Member

EnergyAnswers
Baltimore

December 22, 2014

David P. Mummert
Air Quality Permits
Program Maryland Department of the Environment
1800 Washington Boulevard, Suite 730
Baltimore, MD 21230

Re: Transfer of NOx Emission Reduction Credits from HRE Sparrows Point, LLC to Energy Answers Baltimore, LLC

Dear Mr. Mummert:

Energy Answers Baltimore, LLC ("Buyer") has entered into an agreement to purchase from HRE Sparrows Point, LLC and Sparrows Point LLC (collectively "Seller") 62.75 ton per year of NOx Emission Reduction Credits ("ERCs") from the former RG Steel facility, located in Baltimore County, Maryland, which have an expiration date of September 14, 2022. The ERCs will be for internal use by the Buyer.

Seller's representative for this matter and relevant contact information as follows:

Roberto Perez HRE Sparrows Point, LLC
5 Revere Drive
Northbrook, IL 60062 847-418-2071

Buyer's representative for this matter and relevant contact information as follows:

Sean Mahoney
Energy Answers Baltimore, LLC
c/o Energy Answers International, Inc.
79 North Pearl Street
Albany, NY 12207

Please send acknowledgement of this letter and of the ERC transfers to the representatives of both Buyer and Seller as indicated above. In addition, if you have any questions or require further information, please contact seller's representative at the number referenced above.

Thank you for your prompt attention to this matter.

Sincerely,

Sean Mahoney

MARYLAND DEPARTMENT OF THE ENVIRONMENT
1800 Washington Boulevard • Baltimore MD 21230
MDE 410-537-3000 • 1-800-633-6101 • www.mde.maryland.gov

Martin O'Malley
Governor

Anthony G. Brown
Lieutenant Governor

Robert M. Summers, Ph.D.
Secretary

DEC 23 2014

Mr. Roberto Perez
HRE Sparrows Point, LLC
5 Revere Drive
Northbrook, IL 60062

Re: Transfer of Emission Reduction Credits from Sparrows Point, LLC to Energy Answers Baltimore, LLC.

Dear Mr. Perez:

The Department has received your letter of December 10, 2014 in which you notified the Department of the agreement to sell 62.75 tons of NOx ERCs to Energy Answers Baltimore, LLC. HRE Sparrow Point, LLC currently has 2,773 tons of NOx in Maryland's ERC registry. With the consummation of the purchase agreement, 62.75 tons of NOx ERCs will be removed from the registry. The balance of NOx ERCs is 2,710.25 tons. These ERC credits have an expiration date of September 14, 2022.

If you have any questions, please feel free to contact me at 410-537-3206 or david.mummert@maryland.gov .

Sincerely,

David Mummert, Chief
Technical Support Division
Air Quality Permits Program

DM/cm

cc: Ian Fredericks

MARYLAND DEPARTMENT OF THE ENVIRONMENT
1800 Washington Boulevard • Baltimore MD 21230
MDE 410-537-3000 • 1-800-633-6101 • www.mde.maryland.gov

Martin O'Malley
Governor

Anthony G. Brown
Lieutenant Governor

Robert M. Summers, Ph.D.
Secretary

DEC 23 2014

Mr. Sean Mahoney
Energy Answers Baltimore, LLC
c/o Energy Answers International, Inc.
79 North Pearl Street
Albany, NY, 12207

Re: Transfer of Emission Reduction Credits from HRE Sparrows Point, LLC to Energy Answers Baltimore, LLC

Dear Mr. Mahoney:

The Department has received your letter dated December 22, 2014 in which you notified the Department of Energy Answers' agreement to purchase 62.75 tons of NOx ERCs from HRE Sparrows Point, LLC. The ERCs are to be used to satisfy a new source review requirement in the CPCN (PSC Case No. 9199; Order No. 83517) for Energy Answer's Fairfield Renewable Energy Project located in Baltimore, Maryland.

The 62.75 tons of NOx ERCS have been certified and are available for purchase. The expiration date on the ERCs is September 14, 2022.

The Department will update its ERCs registry to reflect the purchase of the NOx ERCs.

If you have any questions or there are any changes in the purchase agreement, please contact me at 410-537-3206 or david.mummert@maryland.gov.

Sincerely,

David Mummert, Chief
Technical Support Division
Air Quality Permits Program

DM/cm

Cc: Angelo Bianca
Karen Irons
Bill Paul
Roberta James

ATTACHMENT H

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Air Pollutant
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logical Health
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Radiation Permits

Available Emission Reduction Credits (ERC)

As of October 1, 2014

Owner	Amount (Tons)				Notes	ERC Expiration Date	ERC Source			ERC Contact Information
	VOC	NO_x	SO_2	$PM_{2.5}$			Permit#	Company Name	Jurisdiction	
Schmidt Baking Company	42	1				1/17/2017	510-00582	Hauswald Bakery	Baltimore City	George Philippou, Esq. Phone: 410-649-0030 ex 3451 Mailing Address: Schmidt Baki Company 1515 Fleet Street Baltimore, M 21231
SASOL North America, Inc.		56	225	7	10 tons of VOC, 62.75 tons of NOx, and 7 tons of PM2.5 committed as of 8/6/2013	7/17/2017	510-00100	SASOL North America	Baltimore City	Joseph Ledvina Phone: 281-588-3446 Mailing Address: SASOL North America, Inc 900 Threadneed Suite 100 Houston, TX 77079
General Motors Corporation		52				5/13/2015	510-00354	General Motors	Baltimore City	Thomas Caltrider Phone: 248-255-7663 Mailing Address: General Mot Corporation WFG Environmen Services M/C: 480-11 W7 30200 Mour Road Warren, MI 48090
Alcoa Inc.			3014	312	89 tons of PM2.5 committed as of 8/6/2013	3/31/2020	021-00005	Alcoa Inc.	Frederick County	Michael A. Palazzolo Phone: 412.553.483 Mailing Address: Alcoa Inc.

										201 Isabella Street Pittsburgh, PA 15212
Essroc Cement Corporation			1137	56		12/31/2018	021-00003	Essroc Cement Corp.	Frederick County	Gary A. Molchan Phone: 610-837-3329 Mailing Address: Essroc Ceme Corporation 3251 Bath P Nazareth, PA 18064
Polystyrene Products Company, Inc.	11					10/27/2020	005-01956	Polystyrene Products Company, Inc.	Baltimore County	Donald Gerard Phone: 410-574-0680 Mailing Address: Polystyrene Products Company, In 8845 Kelso Drive Baltimore, MD 21221
FMC Corporation	16	105	325	17	All VOC, NOX, SO2, , and PM 2.5 ERCs committed as of 8/6/2013	6/2/2018	510-00073	FMC Corporation	Baltimore City	Michael D. Shannon Phone: p: (2 299-6125; f: (215) 299-6 Mailing Address: FMC Corporation 1735 Marke Street Philadelphia PA 19103
GST Autoleather	94					6/2/2017	043-0075	GST Autoleather	Washington County	Dennis Hill Phone: (248) 436-2300 Mailing Address: GST Autoleather 20 Oak Holl Road. Suite 300 Southfield , 48033
HRE Sparrows Point LLC		2963	3519	1355		9/14/2022	005-0147	HRE Sparrows Point	Baltimore County	Roberto Perez Phone: 847-418-2071 cell:847-815-