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Via E-mail and First Class Mail Return Receipt

Ms. Shannon Heafey
Air Quality Permits Program
Air and Radiation Administration
1800 Washington Boulevard
Baltimore, Maryland 21230
shannon.heafey@maryland.gov

RE: Public Comments on MDE Tentative Determination to Issue Access
World (USA), LLC Permit to Construct, Docket # 14-17

Dear Ms. Heafey:

The Environmental Integrity Project (“EIP”) respectfully submits these comments on the Maryland Department of the Environment (“MDE’s”) tentative determination to issue a Permit to Construct (“Draft Permit”) to Access World (USA), LLC (“Access World”) for two 500 ton/hour crushing plants and four 200 ton/hour screening plants at 200 Shipyard Road, Sparrows Point, MD 21219. We appreciate the opportunity to submit these comments.

Background

EIP is concerned about the proposal to add more dust-creating units in this area because of reports that we have received of existing fugitive dust problems in the Fort Howard neighborhood. Fort Howard is located close to the southern point of Sparrows Point, which is the peninsula on which the Access World facility is located. Residents of this community have reported that fugitive dust from existing facilities on Sparrows Point is blowing into Fort Howard.¹ Sparrows Point is slated for massive redevelopment following the 2012 shutdown of a large steel mill. Unless bulk materials-handling facilities located on Sparrows Point are subject to strong, specific, and enforceable permit limits requiring the control of fugitive dust, it is likely that the problems experienced by the Fort Howard community will only increase over the next several years.

In addition, without proper dust control measures, some of the materials that Access World would be allowed to crush and/or screen under the Draft Permit could be harmful to the health of Fort Howard residents. For example, Access World has included manganese fines on the long list of materials it seeks permission to handle at the facility. Manganese dust has created significant air quality and soil problems in the City of Chicago, resulting in, among other things,

¹ See Buzz Beller, *Community members “air” concerns over potential TPA contamination issues*, Baltimore Post, April 21, 2018, at <http://thebaltimorepost.com/community-members-air-concerns-over-potential-tpa-contamination-issues/>

a 2017 Notice of Violation (“NOV”) from the U.S. EPA to S.H. Bell, a company shipping materials including manganese. EPA’s NOV states that, based on data from particulate matter monitors located at the facility, EPA “found manganese levels that exceed the health-based standard screening level” for manganese in violation of Illinois’s State Implementation Plan.² More recently, soil testing in yards located close to the facility has shown manganese contamination in some of those yards.³

Access World is also seeking a permit allowing it to ship petroleum coke (or petcoke), which has also caused fugitive dust problems in Chicago⁴ and “industrial slag.” Industrial slag appears to be a very broad and undefined category that could encompass many different types of material.

I. MDE Should Require that Access World Develop a Fugitive Dust Control Plan That Includes Clear and Specific Conditions for Limiting Fugitive Dust and MDE Should Make Those Conditions Enforceable Under the Permit.

MDE has required in the Draft Permit that Access World must submit a “Fugitive Dust Plan” to MDE for approval.⁵ MDE should ensure that the fugitive dust control plan includes clear and specific requirements and that these requirements take the form of numeric limits where possible. For example, Access World states in its Application that it will cease all vessel unloading activities “if the sustained wind speed is in excess of 35 miles per hour.”⁶ This should be set forth as a requirement in the fugitive dust control plan.

In addition, MDE should require Access World to comply with the conditions of the fugitive dust control plan as part of its permit. MDE took this approach in the Permit to Operate that it issued in 2014 for the CSX Curtis Bay Piers coal export terminal in Baltimore City,⁷ although we urge MDE to set forth more specific requirements in the Access World permit than it did in the CSX Curtis Bay Piers permit. EIP submitted comments in 2013 on the renewal of the CSX permit suggesting several types of limits used in other states to reduce fugitive dust. We are attaching excerpts from our previous comments to MDE as suggestions for how it could approach this issue in the context of the Access World facility.⁸

² EPA Region 5, Notice of Violation to S.H. Bell Company, Chicago Illinois (August 7, 2017) at <https://www.epa.gov/sites/production/files/2017-08/documents/sh-bell-chicago-nov-20170807-5pp.pdf>.

³ Michael Hawthorne, *Manganese pollution in Southeast Side yards prompts new EPA probe*, Chicago Tribune, May 9, 2018, at <http://www.chicagotribune.com/news/ct-met-manganese-southeast-side-yards-20180508-story.html>.

⁴ See EPA, Petroleum Coke on Chicago’s South Side, at <https://www.epa.gov/petroleum-coke-chicago>.

⁵ Draft Permit at 9.

⁶ Application Section 6.0.

⁷ See CSX Transportation, Inc., Curtis Bay Piers, Permit-to-Operate Conditions, Permit 510-02263 at 7-8 (attached hereto as Attachment A).

⁸ Letter from Leah Kelly, EIP Attorney, to Karen Irons, Manager, Air Quality Permits Program, dated September 23, 2013 (excerpts attached hereto as Attachment B).

II. MDE May Not Treat the Access World Facility as a Synthetic Minor Source of NO_x Without Revising the Draft Permit.

In addition, MDE is proposing to treat the Access World facility as a synthetic minor source of nitrogen oxides (NO_x). However, the Draft Permit lacks conditions sufficient to properly limit NO_x emission below major source thresholds. MDE may not issue a minor source permit to Access World unless it revises the Draft Permit to include additional conditions that will ensure its minor source status.

Under the federal Clean Air Act, major sources of air pollution are subject to more stringent requirements than minor sources. A new major source (or major modification) must install pollution control technology meeting federal Best Available Control Technology (“BACT”) or Lowest Achievable Emissions Rate (“LAER”) standards. If the source will produce pollution for which the surrounding area does not meet federal health-based air quality standards (a “nonattainment area”), the applicant must purchase pollution offsets for the nonattainment pollutant and its precursors. A new minor source or minor modification is not subject to these requirements. In addition, major sources must obtain a federal Title V operating permit, which is enforceable by citizens and the EPA. Title V permits must be renewed every five years, and the public has the right to receive notice about these permit renewals and participate in the renewal process. Conversely, for minor sources in Maryland, the public has no right to participate in the permit renewal process.

MDE must determine whether a proposed source constitutes a major source by comparing its potential to emit (“PTE”) to major source pollutant thresholds established by law.⁹

“Potential to emit” means the maximum capacity of a stationary source to emit an air pollutant under its physical and operational design. A physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the EPA.¹⁰

In addition, permit limits “can be relied upon to restrict a source’s PTE only if [they are] legally and practicably enforceable.”¹¹ MDE may include limits in state permits to construct and state permits to operate that have the effect of being enforceable by the EPA.¹²

⁹ COMAR 26.11.02.01(C).

¹⁰ COMAR 26.11.02.01(B)(41). This is very similar to the federal definition of “potential to emit.” *See* 40 C.F.R. § 52.21(b)(4); 40 C.F.R. § 51.165(a)(iii).

¹¹ *In re Cash Creek Generating Station*, Order on Petition No. IV-2010-4 (2012), at 15 (available at https://www.epa.gov/sites/production/files/2015-08/documents/cashcreek_response2010.pdf).

¹² *See* COMAR 26.11.02.03 (setting forth the conditions under which a condition in a state permit to construct or permit to operate may be federally enforceable); COMAR 26.11.02.01(B)(19) (“‘Federally enforceable requirements of a permit to construct or State permit to operate’ means the provisions of a permit to construct or State permit to operate that meet the requirements of Regulation .03 of this chapter.”).

The Tentative Determination and the Application both state that the PTE for the two crushing plants and four screening plants for NOx¹³ is 22.6 tons per year. The major source threshold for NOx in Baltimore County is 25 tons per year.¹⁴ EIP notes that MDE is proposing to allow Access World to add screening and crushing plants to an existing facility, and we respectfully request that MDE explain how the PTE for the facility will be limited below 25 tons per year if the PTE for just the new emissions units will be 22.6 tons per year.

In addition, MDE is proposing to keep emissions from the diesel engines below major source thresholds by using a blanket emissions limit,¹⁵ which is not legally sufficient to limit PTE. MDE may not treat Access World as a synthetic minor source solely on the basis of premises-wide emission limits for NOx. As stated above, in order for a synthetic minor limit to be valid, it must be not only federally enforceable but also enforceable as a practical matter. EPA has clearly explained that blanket emission limits of the kind set forth in the Draft Permit are not sufficient to limit PTE below major source thresholds. Specifically, EPA has noted that:

In *United States v. Louisiana-Pacific Corporation*, 682 F. Supp. 1122 (D. Colo. Oct. 30, 1987) and 682 F. Supp. 1141 (D. Colo. March 22, 1988), Judge Alfred Arraj discussed the type of permit restrictions which can be used to limit a source's potential to emit. The Judge concluded that: ... not all federally enforceable restrictions are properly considered in the calculation of a source's potential to emit. While restrictions on hours of operation and on the amount of materials combusted or produced are properly included, blanket restrictions on actual emissions are not.¹⁶

Thus, MDE may not treat the Access World facility as a synthetic minor source unless it revises the Draft Permit to include practically enforceable limits that will keep NOx emissions below 25 tons per year.

Thank you for your consideration of these comments.

Sincerely,



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¹³ Tentative Determination at 6. EIP assumes that the reference to nitrogen dioxide (NO2) value in MDE's PTE table (Table I in the Tentative Determination) is intended to refer to NOx and that the NO2 label is an error. If MDE is, in fact, projecting 22.6 tpy of NO2, which is a species of NOx, then total NOx from the facility would be even higher.

¹⁴ COMAR 26.11.02.01(C)(i).

¹⁵ Operating Conditions 5 & 6, Draft Permit at 9.

¹⁶ Memorandum from Terrell E. Hunt, Associate Enforcement Counsel, Air Enforcement Division, Office of Enforcement and Compliance Monitoring, Guidance on Limiting Potential to Emit in New Source Permitting (June 13, 1989) at 3, at https://www3.epa.gov/airtoxics/pte/june13_89.pdf.

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