



1000 Vermont Avenue, NW  
Suite 1100  
Washington, DC 20005  
Main: 202-296-8800  
Fax: 202-296-8822  
[www.environmentalintegrity.org](http://www.environmentalintegrity.org)

February 10, 2016

**Via E-mail and Certified U.S. Mail – Return Receipt Requested**

Patrick F. Mahoney, President  
Energy Answers International, Inc.  
79 N. Pearl St., 4<sup>th</sup> Floor  
Albany, New York 12207  
[pmahoney@energyanswers.com](mailto:pmahoney@energyanswers.com)

Patrick F. Mahoney, President  
Energy Answers Baltimore, LLC  
1209 Orange Street  
Wilmington, Delaware 19801  
[pmahoney@energyanswers.com](mailto:pmahoney@energyanswers.com)

The Corporation Trust Incorporated  
Registered Agent for Energy Answers International, Inc., and Energy Answers Baltimore, LLC  
351 West Camden Street  
Baltimore, Maryland 21201

***Re: Notice of Intent to Sue for Violating the Clean Air Act***

Dear Mr. Mahoney, et. al.,

The Environmental Integrity Project (“EIP”) is writing on behalf of the United Workers Association, Inc. (“Plaintiff”) to provide you with notice of Plaintiff’s intent to bring suit against Energy Answers International, Inc. and its subsidiary, Energy Answers Baltimore, LLC (collectively “Energy Answers”) for violating the Clean Air Act.

As explained more fully below, the Clean Air Act requires anyone proposing the construction of a “major emitting facility” in an attainment area for criteria pollutants to first obtain a permit under the Clean Air Act Prevention of Significant Deterioration (“PSD”) program. 42 U.S.C. § 7475(a)(1). Energy Answers plans to build a 4,000-ton-per-day waste combustion plant known as the Fairfield Renewable Energy Project (“Fairfield Incinerator”), which would be a major emitting facility, in Baltimore City, Maryland, an attainment area for several pollutants. Therefore, Energy Answers must have a PSD permit authorizing it to build the Fairfield Incinerator.

Energy Answers received a Certificate of Public Convenience and Necessity (“CPCN”), which constitutes its PSD permit, in August of 2010. However, under federal regulations, a PSD permit expires automatically if a permittee “discontinues construction for a period of 18 months

or more.” 40 C.F.R. § 52.21(r)(2); 40 C.F.R. § 124.5(g)(2) (permit expiration is automatic). Under the specific conditions of Energy Answers’ CPCN, the air quality provisions of its CPCN expire if “[c]onstruction is substantially discontinued for a period of 18 months or more after it has commenced.”<sup>1</sup> Energy Answers substantially discontinued construction starting on November 1, 2013. The lapse in construction extended to May 1, 2015, and, on that date, the air quality provisions of Energy Answers’ CPCN expired. Therefore, Energy Answers no longer has a valid PSD permit.

Energy Answers may not lawfully construct the Fairfield Incinerator without applying for and obtaining a new PSD permit, but the company has stated its intent to move forward without seeking a new PSD permit. Proposing construction in the absence of a valid PSD permit is a violation of the Clean Air Act, and citizens are authorized to sue to prevent this from continuing.

## I. Authority to Bring Suit

The Clean Air Act authorizes citizen suits “against any person who proposes to construct or constructs any new . . . major emitting facility without a permit required under part C of subchapter I of this chapter (relating to significant deterioration of air quality) . . .” 42 U.S.C. § 7604(a)(3). The Clean Air Act provides for civil penalties of up to \$37,500 per day per violation. 42 U.S.C. §§ 7413 (d)(1),(e) and 7604(a), 40 C.F.R. §§ 19.2 and 19.4.

You should be aware that Plaintiff is not required to provide Energy Answers with notice prior to commencing legal action under Clean Air Act section 304(a)(3). *See* 42 U.S.C. § 7604(b). By providing this courtesy notice, Plaintiff does not waive its right to commence action directly in federal district court under Clean Air Act section 304(a)(3) at any time or limit itself in any way to the assertions set forth herein.

## II. Background

Energy Answers received its CPCN, which constitutes its PSD permit, from the Maryland Public Service Commission (“PSC”) on August 6, 2010. The CPCN initially required Energy Answers to commence construction of the Fairfield Incinerator by February 6, 2012, but that deadline was extended to August 6, 2013 by order of the PSC.<sup>2</sup> Energy Answers performed construction of the Fairfield Incinerator from August 19, 2013 through October 31, 2013. On November 1, 2013, Energy Answers discontinued construction of the Fairfield Incinerator. As of May 1, 2015, it had discontinued construction for a period of eighteen months and its PSD approval to construct the facility expired.

During this time, Energy Answers was subject to an enforcement order prohibiting it from constructing for a period of, at most, 237 days (slightly less than eight months).<sup>3</sup> Energy

---

<sup>1</sup> Md. Pub. Serv. Comm’n, Final Recommended Licensing Conditions, PSC Case No. 9199, Energy Answers Baltimore, LLC – Fairfield Renewable Energy Project (Jan. 10., 2013) (hereinafter “CPCN” or “Energy Answers CPCN”) Condition A-6(b).

<sup>2</sup> PSC Order No. 85296, Case No. 9199 (Jan. 10, 2013).

<sup>3</sup> MDE ordered Energy Answers to halt construction by letter dated June 19, 2014. In its December 7, 2015 letter to MDE, Energy Answers claimed that it received a letter lifting the stop-work order on February 11, 2015. In the unlikely event that Energy Answers received the stop-work order letter immediately but did not receive the February

Answers' construction obligations cannot be considered "tolled" during this period because the "stop-work order" was issued in response to Energy Answers' violation of a separate condition of its CPCN. Energy Answers has never disputed or appealed the Maryland Department of the Environment's ("MDE's") determination that it violated its CPCN, and the violation persisted for the majority of the time that it was subject to the stop-work order. However, even if the construction requirements were tolled during the maximum possible period of the stop-work order, the air quality provisions of the CPCN have still expired because, according to all available information, Energy Answers failed to resume construction by December 24, 2015.<sup>4</sup>

MDE stated in a November 24, 2015 letter to Energy Answers that it "had no documentation that construction activity, in the Clean Air Act sense, has occurred [on the Fairfield Incinerator] since October 31, 2013 . . . ."<sup>5</sup> At the time that it sent this letter, MDE had in its possession quarterly reports submitted by Energy Answers of all on-site activities through October 31, 2015. MDE also requested in its November 24, 2015 letter that Energy Answers provide documentation that the permit had not expired. Specifically, MDE requested that Energy Answers submit "all documents, dated prior to November 3, 2015, showing that Energy Answers has (1) begun or caused to begin a continuous program of actual on site construction of the Fairfield facility; or (2) entered into a binding agreement that cannot be cancelled without substantial loss to Energy Answers."

In a responsive letter dated December 7, 2015, Energy Answers discussed on-site activities from 2013 through the date of the letter and its near-term plans.<sup>6</sup> None of the activities that Energy Answers claims to have performed in this letter constitute "construction" for Clean Air Act purposes, as that term has been interpreted in case law, policy guidance issued by the U.S. Environmental Protection Agency ("EPA"), and permit decisions rendered by other regulatory agencies, including EPA Region III. Moreover, the activities that Energy Answers claimed that it would perform by the end of December of 2015 do not constitute "construction." Energy Answers also did not submit any information relating to contractual agreements for construction or make any claims about such contracts, despite the fact that MDE explicitly requested documentation of this in its November 24, 2015 letter. This is further evidence that its PSD permit has expired.

Thus, even if Energy Answers were allowed the maximum possible amount of additional time because of the stop-work order, based on all information available to Plaintiff, its permit has unequivocally expired.

---

3, 2015 letter lifting the order until eight days after it was sent, Energy Answers would have considered itself barred from construction for 237 days, the maximum possible period of the order.

<sup>4</sup> Energy Answers has claimed that it had until January 3, 2016 to resume construction; however, the basis for this date is entirely unclear.

<sup>5</sup> Ltr. from Ben Grumbles, Secretary, MDE, to Patrick F. Mahoney, President, Energy Answers International (Nov. 24, 2015) (Attachment A hereto).

<sup>6</sup> Ltr. from Patrick Mahoney, President, Energy Answers Baltimore, LLC, to Ben Grumbles, Secretary, MDE (Dec. 7, 2015) (Attachment B) (Attachment B hereto).

### III. Claim: Proposing to Construct Without a PSD Permit

The Clean Air Act prohibits construction of a “major emitting facility” in an attainment area without a PSD permit. 42 U.S.C. § 7475(a)(1). Similarly, federal regulations implementing the Clean Air Act prohibit construction of a “major stationary source” without a permit meeting PSD requirements. 40 C.F.R. § 52.21(a)(2)(iii). These regulations are incorporated by reference into Energy Answers’ CPCN through Condition A-9(g) and incorporated into Maryland’s laws implementing the Clean Air Act. COMAR 26.11.06.14(B).

Baltimore City is an attainment area for several pollutants. The Fairfield Incinerator is also an air pollution source that meets the definitions of “major stationary source” and “major emitting facility” under the Clean Air Act and implementing federal and state regulations. 42 U.S.C. § 7602(j); 40 C.F.R. § 52.21(b)(1)(i); COMAR 26.11.02.01(C). Therefore, Energy Answers must have a PSD permit for construction of the incinerator.

The air quality provisions of Energy Answers’ CPCN, which constitute its PSD permit, have expired. Energy Answers may not lawfully construct the Fairfield Incinerator without applying for and obtaining a new CPCN. However, Energy Answers continues to argue otherwise and has publicly stated that it plans to construct the Fairfield Incinerator under the expired CPCN.<sup>7</sup> Proposing to construct the incinerator without a PSD permit is a violation of the Clean Air Act, and citizens are authorized to initiate legal action against any person “who proposes to construct or constructs” a major emitting facility without the required permit. 42 U.S.C. § 7604(a)(3). Unless Energy Answers applies for a new CPCN or agrees not to construct the facility without doing so, Plaintiff intends to initiate action to prevent construction of the Fairfield Incinerator without the required PSD permit.

### IV. Conclusion

Plaintiff intends to file suit seeking declaratory relief, injunctive relief, appropriate monetary penalties, fees and costs of litigation, and such other relief as the Court deems appropriate. If you have any questions regarding the allegations in this notice or believe any of the foregoing information to be in error, please contact me at the phone number or email address below.

Sincerely,



Leah Kelly

Attorney

Environmental Integrity Project

1000 Vermont Ave. NW, Suite 1100

Washington, D.C. 20005

---

<sup>7</sup> See Christina Jedra, *Despite Protests and Delays, Full-Time Construction of Power Plant set for 2016*, CAPITAL GAZETTE, October 31, 2015, available at [http://www.capitalgazette.com/maryland\\_gazette/news/ph-ac-gn-energy-answers-power-plant-1028-20151030-story.html](http://www.capitalgazette.com/maryland_gazette/news/ph-ac-gn-energy-answers-power-plant-1028-20151030-story.html); Ltr. from Patrick Mahoney, President, Energy Answers Baltimore, LLC, to Ben Grumbles, Secretary, MDE (Dec. 7, 2015) (Attachment B).

Phone: (202) 263-4448  
lkelly@environmentalintegrity.org

*Counsel for:*  
*United Workers Association, Inc.*

Cc:

The Hon. Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
Office of the Administrator, Mail Code 1101A  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

*Via Certified Mail Return Receipt Requested*

Shawn M. Garvin  
Regional Administrator  
U.S. Environmental Protection Agency, Region 3  
1650 Arch Street (3PM52)  
Philadelphia, Pennsylvania 19103

*Via Certified Mail Return Receipt Requested*

Benjamin H. Grumbles  
Secretary of the Environment  
Maryland Department of the Environment  
1800 Washington Boulevard  
Baltimore, Maryland 21230  
ben.grumbles@maryland.gov

*Via E-mail and Certified Mail Return Receipt Requested*

Brian Frosh  
Attorney General of Maryland  
200 St. Paul Place  
Baltimore, Maryland 21202  
bfrosh@oag.state.md.us

*Via E-mail and Certified Mail Return Receipt Requested*

George (Tad) Aburn  
Director  
Air & Radiation Management Administration  
Maryland Department of the Environment  
1800 Washington Blvd.  
Baltimore, Maryland 21230  
george.aburn@maryland.gov

*Via E-mail and Certified Mail Return Receipt Requested*

Roberta James  
Assistant Attorney General  
Maryland Department of the Environment  
1800 Washington Blvd.

*Via Certified Mail Return Receipt Requested*

Baltimore, Maryland 21230

Todd R. Chason, Esq.  
Gordon Feinblatt  
233 East Redwood Street  
Baltimore, Maryland 21202

*Via Certified Mail Return Receipt Requested*

# **ATTACHMENT A**



## MARYLAND DEPARTMENT OF THE ENVIRONMENT

1800 Washington Boulevard • Baltimore MD 21230

410-537-3000 • 1-800-633-6101 • [www.mde.maryland.gov](http://www.mde.maryland.gov)

Larry Hogan  
Governor

Ben Grumbles  
Secretary

Boyd Rutherford  
Lieutenant Governor

November 24, 2015

Patrick F. Mahoney, President  
Energy Answers International  
79 North Pearl Street, 4<sup>th</sup> Floor  
Albany, NY 12207

Dear Mr. Mahoney:

It has been several months since we met in my office and I wanted to give you an update on where the Department of the Environment (MDE) stands with respect to the permitting of Energy Answers' Fairfield Renewable Energy Project. When we last spoke it was primarily an opportunity for you to brief me on the project and your plans moving forward. I recall that your aim was to secure financing by the end of this year so that construction beyond what has taken place to date can occur. It is this point, the degree of construction activity, that has become a significant issue at this time and is the reason for this update by MDE.

As has been mentioned on previous occasions, there are a few key federal requirements that apply to this project; namely, construction must commence within eighteen months of permit issuance, it must be continuous (not be discontinued for a period of eighteen months) and it must be completed within a reasonable time in order for the construction approval to remain valid. With the granting of an eighteen-month extension to the original August 6, 2010 approval and the construction of piles to support the facility's stack commencing on August 6, 2013, the requirement to commence construction within eighteen months (of the extension that was granted) was satisfied.

Whether the latter two requirements (continuous construction and completed within a reasonable time) have been satisfied is not so straightforward. According to our records, over six years have passed since the original approvals were issued for this project without any substantive construction beyond the pile driving mentioned earlier, which ceased on October 31, 2013. It is recognized that, because of the former use of the site, there are site constraints that affected the engineering for the foundation of the facility and associated utilities, which affected the timing for the design of the facility. The timing of the lifting of the Department's 2014 stop work order also had some effect on the timing of your project. Finally, the Department recognizes that you have recently secured a permit to crush concrete existing at the site and intend to use the crushed material around the property to elevate utility lines serving the facility and that the crushing work is scheduled to begin in December 2015.

The design effort and the foundation activity, although positive in their occurrence, are not considered adequate to satisfy the requirements of continuous construction and completing construction in a reasonable time. "Construction" has a specific meaning under federal Clean Air Act rules governing this project, and a review of available case law and federal guidance finds that the type of activity that has taken place to date





would not meet the definition of construction. Various courts have ruled that, in order to fit within the federal definition, construction needs to be something of a permanent nature and to a degree that it pushes forward the project to a point that creates an irrevocable commitment to finish the facility. Maryland regulations generally follow the federal definition.

The status of valid construction activity is noteworthy at this time because it bears upon the requirement to not discontinue construction for eighteen months. We have no documentation that construction activity, in the federal Clean Air Act sense, has occurred since October 31, 2013, which would mean the eighteen-month continuous construction period expired over six months ago. If we were to allow additional time for the nearly six-month delay in the project attributable to the Department's lifting its stop work order, by every account the last possible date by which a delay in any construction activity can be supported is November 3, 2015. The specific language in the CPCN that expresses the construction timing issue is Condition A-6, which states:

*In accordance with COMAR 26.11.02.04B, the air quality provisions expire if, as determined by MDE-ARMA:*

- a) Construction is not commenced within 36 months after the August 6, 2010 effective date of the CPCN issued in Case 9199;*
- b) Construction is substantially discontinued for a period of 18 months or more after it has commenced; or*
- c) Construction is not completed within a reasonable period of time after the issuance of a final CPCN.*

Before the Department takes any official action on this matter, it is important that the Department's records are up to date. As such, you are asked at this time to provide all documents, dated prior to November 3, 2015, showing that Energy Answers has (1) begun or caused to begin a continuous program of actual on site construction of the Fairfield facility or (2) entered into a binding agreement that cannot be cancelled without substantial loss to Energy Answers. Please provide the requested documents no later than December 7, 2015.

The Department will provide a further update after the information you submit is reviewed. In the meantime, should you have any questions, please call Angelo Bianca, Deputy Director of the Air and Radiation Management Administration at 410-537-3893 or via email at [angelo.bianca@maryland.gov](mailto:angelo.bianca@maryland.gov).

Sincerely,



Ben Grumbles  
Secretary

cc: Todd Chason, Esquire  
Roberta James, Assistant Attorney General  
Angelo Bianca, ARMA Deputy Director



# **ATTACHMENT B**

December 7, 2015

Mr. Ben Grumbles  
Secretary  
Maryland Department of the Environment  
1800 Washington Boulevard  
Baltimore, MD 21230

Dear Secretary Grumbles:

Thank you for your letter of November 24<sup>th</sup> regarding our Fairfield Renewable Energy Project (the "Fairfield Project") and expressing concern that the Fairfield Project has not satisfied the Certificate of Public Convenience and Necessity ("CPCN") requirements for continuous construction or completion within a reasonable time<sup>1</sup>. We appreciate your interest in the Project and the schedule for ongoing construction activities. As your letter notes, these requirements are not black and white, and I believe that a reasonable interpretation leads to the conclusion that the Fairfield Project is in compliance with the CPCN.

The communities of Brooklyn and Curtis Bay have thoroughly evaluated the Fairfield Project and as you know we have their full support as documented by the Memorandum of Understanding signed several years ago. Not only will the Fairfield Project significantly improve air and water quality, land use and conservation of resources, but it will provide long term permanent jobs and business and community development opportunities not otherwise available.

As detailed below;

- (1) the stop-work order consumed almost eight full months between November 1, 2013 and the present, meaning an 18-month period of inactivity would run until January 2, 2016;
- (2) within the last two years Energy Answers has engaged in continuous construction activity not prevented by the stop work order but satisfying the Clean Air Act Standards; and
- (3) additional construction work is planned before the end of 2015.

**1) The MDE stop-work order period alone means the 18-month period extends into January 2016.**

Your letter indicates that November 3, 2015 is "... the last possible date by which a delay in any construction activity can be supported...." However, the Department's letter implementing the

---

<sup>1</sup> I interpret the Department's letter as primarily focusing on the 18 month period rather than on completion timing given that this type of facility involves a comparatively lengthy construction period even without delays.

**Mr. Ben Grumbles**  
**December 7, 2015**  
**Page 2**

stop work order was dated June 19, 2014 (See attached). The subsequent letter lifting the stop work order was received by Energy Answers on February 11, 2015, which represents an almost eight month prohibition on construction activity for the power plant itself. Therefore, fully crediting this period when Energy Answers could not perform work under the permit while it was actively working with the Department to resolve the complaint should mean the 18-month period runs until January 3, 2016.

**2) Continuous construction program**

As your letter notes, there is no precise statutory or regulatory definition regarding the nature and extent of construction required to satisfy the requirement that construction not cease for more than 18 months. This necessitates a case-by-case analysis by the regulator to determine whether, considering all relevant facts and circumstances, the intent of the Clean Air Act has been satisfied.

COMAR 26.11.02.04B, as incorporated into the Project's CPCN as Condition A-6, provides that the Project's PSD permit expires if: (1) construction is substantially discontinued for a period of 18 months or more after it has commenced, or (2) construction is not completed within a reasonable period of time after issuance of a final CPCN. EPA has issued guidance interpreting on-site construction as meaning "placement, assembly, or installation of materials, equipment, or facilities which will make up part of the ultimate structure of the source." "Commence Construction" under PSD, United States Environmental Protection Agency, 2 (July 1, 2017). Along these lines, "[p]lacement of footings, pilings, and other materials needed to support the ultimate structures clearly constitute on-site construction." *Id.* These activities "must take place on-site or must be site specific." *Id.* Site clearing and excavation activities, such as the digging of the hole, do not satisfy this requirement. *Id.*; see also *Sierra Club v. Franklin County Power of Illinois*, 546 F.3d 918, 931 (7th Cir. 2008) (adopting EPA's guidance and finding that digging a hole constitutes an excavation activity).

In the absence of actual "placement, assembly, or installation of materials, equipment, or facilities which will make up part of the ultimate structure of the source," construction can be established through "clear evidence (through contracts or otherwise) that construction of the entire facility will definitely go forward in a continuous manner." *Id.* EPA has found that "contracts for work on footings, pilings, and other site specific materials will clearly satisfy [this] requirement, while contracts for clearing and excavation will not." *Id.* Contracts for non site-specific equipment, such as boilers, will not satisfy this requirement. *Id.* A PSD permit holder has thus not "substantially discontinued construction" if it has satisfied this definition of "on-site construction" during the 18-month period. COMAR 26.11.02.04B(2).

Since construction began in August 2013, numerous construction activities have occurred on the site that satisfy the Clean Air Act requirements set forth above. Please remember that the value of reusing an otherwise unusable industrial site requires addressing many issues not found on a "greenfield site". Solving infrastructure and contamination issues and designing

**Mr. Ben Grumbles**

**December 7, 2015**

**Page 3**

construction solutions is an essential part of doing that right. The following list of specific activities has been performed to prepare the site for future long-term use - work that would otherwise not be done were it not for the construction of the Project.

- **Storm Water Handling Improvements:**

- During heavy, 24 hour precipitation storm events, part of the site along the east-west line adjacent to the Power Plant footprint experiences flooding. Upgrades to the installed infrastructure are being implemented to facilitate better management of these events.

During the summer of 2013, a specialty contractor was brought in to inspect and evaluate the current conditions of the storm water holding tanks T-2501, T-2502, T-4301 and T-4302, and their ability to support long-term site use. The associated storm water piping, pumps, instrumentation, electrical components and structural supports were also evaluated. Much of the fiberglass piping was weathered and cracked, the electrical and instrumentation aged and in need of upgrades, and many of the structural supports had rusted, failed or been damaged.

The upgrades and modifications involve:

- T-2501 was not economically repairable and will be decommissioned and removed from the site.
- T-2502 and T-4301 will be repaired and remain in-service.
- The existing lift pump will be replaced and piping changed to increase the pumping capacity of the system to avoid flooding and ponding.
- Controls will be upgraded.

- Design work started: Fall 2013
- Field work started: Sept 14, 2015

- **Impoundment Area Improvements:**

- To improve worker safety and suitability for redevelopment, a French drain system was installed around the impoundment area. This eliminated sub-surface rainwater runoff on adjacent site roads.
- Design work started: Winter 2014
- Field work started: March 2015 and completed April 2015 (2nd week)

- **Electrical reliability:**

- To improve electrical reliability to the site, BGE re-fed the site directly from the Patapsco Ave aerial 13.2 KV feeders. The electrical substation was deactivated

**Energy Answers Baltimore, LLC**

MARYLAND: 1701 East Patapsco Avenue • Baltimore • MD • 21228 • 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

- and removed.
- Design work started: June 2015
- Field work started: mid July 2015 and completed mid August 2015
- North Parcel prep work to prepare for upcoming crushing operations and interim occupancy by a 3<sup>rd</sup> party tenant:
  - To enhance the ability to develop the North Parcel, legacy contamination issues needed to be addressed. The proposed plan is to excavate the source contamination along the road leading to the former Bldg 91 process structure – approximately 300 tons. This area is north of the rail siding on the North Parcel. This soil would be treated on site or disposed of off-site as required.
  - This area would be capped as laid out in the Corrective Measures Study/Implementation Plan.
  - Overgrown vegetation has been mowed and cleared to allow for grading and former foundations to be removed
  - The rail spur from the cross-property rail lines on the North Parcel has been removed.
  - Historical groundwater sampling results for the portion of the North Parcel south of the rail siding shows no legacy issues pertaining to the potential for vapor risks. The USEPA requested, in a letter dated November 19, 2015, that empirical data be collected to confirm this. A work plan is currently being developed for USEPA approval. This sampling will likely be conducted in Q1 2016. Based on those testing results, a request can be submitted to USEPA to reclassify the area as non-restricted, which will allow more economical redevelopment.
  - The entire parcel will be graded with storm water management features incorporated. Paving, fencing and lighting will be installed for safe interim use of the parcel and longer term use for equipment lay down and ultimate development of the eco-industrial park. We have received a letter of intent from a prospective tenant.
  - Design work started: May 1, 2015
  - Field work started: August 2015
- Warehouse Evaluation and upgrade
  - To determine the work necessary to upgrade the warehouse to a safe, usable condition and determine whether it could be used for Project purposes. The following work has been done:
    - In March of 2015, an engineering evaluation was done to determine what services would be needed to reoccupy the warehouse now that essential services to this site have been cut. Those services included, water, firewater, electricity, sanitary and alternate fuel supply to a small

packaged boiler for steam.

- Soil gas and wipe samples were taken to establish the requirements for the occupancy of the existing warehouse for reuse. Sampling was done in: 2<sup>nd</sup> week of September 2015.
  - The results of the soil gas survey were summarized in the *Subslab Soil Gas Sampling in the Warehouse Report* and submitted to the USEPA on December 3, 2015.
- **Repair and replacement of Patapsco Ave rail crossing**
    - The existing rail crossing at Patapsco Avenue has failed and traffic is forced to dodge large potholes in the crossing. It was deemed necessary to try to repair this crossing before the end of the year.
    - Materials have been received on-site to replace the railroad ties and replace the rubber rail crossing.
    - Permitting started: November 6, 2015
    - Field work is scheduled for December 14, 2015

Taken together, these activities rise above mere excavation and site clearing, and represent necessary, on-site work and actual construction satisfying the Clean Air Act construction requirements detailed above. Thus, irrespective of the work stop period, Energy Answers is in compliance with its CPCN.

### 3) Additional planned construction

The timeline above accommodates our year-end target of further continuing construction activity sufficient to maintain compliance with the permit, specifically the impending concrete rubble "crushing" work intended to recover the material for re-use as structural backfill in the Project's construction plan and also the following activities currently underway:

- Pulling up stumps from the removed trees
- Pulling up the defunct railroad siding that used to serve the old unloading station
- Pulling up pipe bollards, and later cutting off hydrants and post indicating valves
- Filling abandoned pipes that have the potential of causing sink holes, and filling the existing sink holes

The additional planned work in advance of the "crushing" scheduled for December includes:

- Demolishing the above ground concrete piers, slabs and foundations to be incorporated into the existing rubble piles.

### **Quarterly reports**

In accordance with Angelo Bianca's letter of March 12, 2014 requiring Energy Answers to provide quarterly status reports on construction activities at the Fairfield Project to ensure

#### **Energy Answers Baltimore, LLC**

MARYLAND: 1701 East Patapsco Avenue • Baltimore • MD • 21226 • Phone: 443 802 3750 • Fax: 443 802 3780  
NEW YORK: 79 North Pearl Street • Albany • NY • 12207 • Phone: 518 434 1227 • Fax: 518 438 6343

**Mr. Ben Grumbles**  
**December 7, 2015**  
**Page 6**

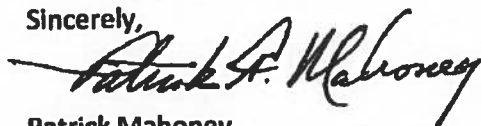
compliance with State and Federal regulations, we have since provided quarterly reports that included descriptions of the ongoing construction activity and also work scheduled to be undertaken in December 2015, most notably the "crushing" work described above. We also discussed the rationale behind the "crushing" work at our meeting at MDE on July 1, 2014, and its consistency with the overall resource recovery approach central to the project.

At that same meeting, we detailed the myriad design and construction considerations associated with the recovery and remediation of a contaminated brownfield site, specifically how site utility use and protection is a major consideration in environmentally sensitive construction work and how the material resulting from the "crushing" work will support those efforts.

Subsequent quarterly reports have also provided information regarding our application for the construction permit required for the "crushing" work, which has now been secured for the December 2015 work plan schedule.

Based on this information, it is clearly within the Department's discretion to allow Energy Answers to continue development and construction of the Fairfield Project. Either or both of the stop-work order and the on-site activities mean that the soonest that the 18-month window could close is next month. With crushing activities set to begin imminently as long as the Department agrees with that conclusion, the upcoming work will easily meet the Clean Air Act standard for work within the 18-month period. Accordingly, I would respectfully request that you allow this much-needed economic development project move forward in Baltimore. We request an early meeting to review your letter and this letter in detail. If you have any questions, please do not hesitate to contact me.

Sincerely,



**Patrick Mahoney**  
**President**  
**Energy Answers Baltimore, LLC**

**cc: Todd Chason, Esquire**  
**Roberta James, Assistant Attorney General**  
**Angelo Blanca, ARMA Deputy Director**  
**Andrew Dize**  
**Councilman Edward Reisinger**

**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**