

MARYLAND DEPARTMENT OF THE ENVIRONMENT,

Plaintiff,

v.

TELEVISION TOWER, INC., *et al.*

Defendants.

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY

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Case No.: 24-C-23-002174

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SECOND AMENDED COMPLAINT FOR INJUNCTIVE RELIEF AND ENFORCEMENT OF CIVIL PENALTIES

The Maryland Department of the Environment (the “Department”), by and through counsel, files this Second Amended Complaint seeking injunctive relief and civil penalties against Television Tower, Inc. (“TTI”) and Skyline Tower Painting, Inc. (“Skyline”), Defendants, and states as follows:

INTRODUCTION

1. This is an action for injunctive relief to require TTI, which owns a broadcast tower located at 3723 Malden Avenue in Baltimore City (the “Tower”), to stabilize the Tower and prevent the further release of paint containing lead, a known hazardous substance, and other debris into the area surrounding the Tower, including waters of the State, and conduct cleanup, testing and remediation in the areas surrounding the Tower. This action seeks cost recovery of soil testing and reporting conducted by the Department,

as well as civil penalties for violations of Title 6, subtitle 10, Title 7, subtitle 2, and Title 9, subtitles 2 and 3 of the Environment Article of the Annotated Code of Maryland (the “Environment Article”) and applicable regulations under the Code of Maryland Regulations (“COMAR”).

2. This is also an action for injunctive relief and civil penalties against Skyline, which conducted activities upon the Tower, for violations of Title 6, subtitle 10, Title 7, subtitle 2, and Title 9, subtitles 2 and 3 of the Environment Article and applicable regulations under COMAR and seeking cost recovery of soil testing conducted by the Department.

3. TTI, which owns the Tower and was aware of the presence of lead-containing paint on the Tower, improperly hired an unaccredited contractor to conduct uncontained lead paint abatement services on the Tower, resulting in lead-containing paint being dispersed, and continuing to be dispersed, into the surrounding residential community, including waters of the State, due to improper work practices and lack of containment. These actions violated Title 6, subtitle 10 of the Environment Article and COMAR 26.16.01.04B and resulted in conditions which present significant health and environmental risks.

4. Skyline, hired by TTI, was the contractor that conducted lead abatement services on the Tower, performed work disturbing lead-based paint without proper accreditation, and failed to comply with applicable lead abatement procedures and

requirements, including the failure to properly contain paint chip debris and particulates, resulting in lead-containing paint being dispersed into the surrounding residential community and waters of the State. These actions violated the requirements of Title 6, subtitle 10 of the Environment Article and associated COMAR 26.16 *et seq.* and resulted in conditions which present significant health and environmental risks.

5. Defendants, individually and/or through agents, through the disposal and disbursement of leaded paint chips and debris in the vicinity of and within pathways leading to waters of the State, placed pollutants into waters of the State, or in a position likely to pollute waters of the State. These actions violated Title 9, subtitle 3 of the Environment Article and associated COMAR 26.08 *et seq.*

6. Defendants, individually and/or through agents, disposed of, or allowed and suffered the disposal of, solid waste in the form of leaded paint chips in an open dump without permits required for a sanitary landfill, as well as engaged in solid waste handling in a manner that would likely create a nuisance, impair the quality of the environment, or create other hazards to the public health, safety, or comfort. These actions violated Title 9, subtitle 2 of the Environment Article, COMAR 26.04.07.03B(4), and COMAR 26.04.07.03A.

7. Defendants, individually and/or through agents, failed to test the solid waste being generated from the Tower in order to make a hazardous waste determination. This violated Title 7, subtitle 2 of the Environment Article and COMAR 26.13.03.02.

8. The Department is not only entitled to penalties against Defendants under Environment Article Title 6, subtitle 10, Title 7, subtitle 2, and Title 9, subtitles 2 and 3, but also injunctive relief to require thorough cleanup of the surrounding communities, including waters of the State, and to require one or both Defendants immediately to stabilize and contain the Tower paint to prevent further dispersal of leaded paint chips into the surrounding community and waters of the State, conduct any necessary soil remediation based upon soil sampling results, conduct any follow-up dust testing and cleaning in certain properties at which paint chips from the Tower were identified, and conduct any further follow-up soil sampling or other testing for closure purposes.

9. The Department is further entitled to cost recovery under Environment Article Title 7, subtitle 2 from Defendants for costs that it has and will incur in connection with the remedial actions that the State of Maryland has taken, and will take, in response to the release or threatened release of hazardous substances from the Tower into the residential community and waters of the State, and also to award attorneys' fees and costs associated with this litigation.

JURISDICTION AND VENUE

10. The Department brings this action for injunctive relief pursuant to §§ 6-422 through 6-422 and 6-1001 through 6-1005, and 9-339 of the Environment Article and Maryland Rules 15-502 and 15-505.

11. This Court is the proper venue for this action pursuant to §§ 6-201 and 6-202 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland because Defendants own property and/or were engaged in activities relevant to this Second Amended Complaint in Baltimore City.

PARTIES

12. Plaintiff is an agency within the Executive Branch of the State of Maryland. The Secretary of the Environment is responsible for enforcing the provisions of the Environment Article and the rules and regulations adopted under the Environment Article.

13. TTI owns the Tower and regularly conducts business in Baltimore City. TTI hired Skyline to perform work on the Tower on behalf of TTI.

14. Skyline is a Colorado corporation that performed lead abatement services on the Tower and conducted business in Baltimore City.

REGULATORY AUTHORITY

Title 6, subtitle 10 – Accreditation of Lead Paint Abatement Services

15. In order to assure that lead paint abatement services are performed in a safe manner and by competent workers and contractors, § 6-1002 of the Environment Article requires contractors, supervisors, inspectors and trainers to be accredited by the Department. Section 6-1003 of the Environment Article authorizes the Department to issue regulations covering the requirements of such accreditation. Pursuant to this authorization, the Department adopted COMAR 26.16.01, .02 and .05.

A. Definitions

16. Under § 6-1001(e) of the Environment Article, “provide lead paint abatement services” means “to engage in the risk assessment, inspection, or abatement of lead-containing substances.”

17. Under § 6-1001(b) of the Environment Article, “abatement” means “a set of measures that eliminate or reduce lead-based paint hazards in residential, public, or commercial buildings, bridges, or other structures or superstructures,” to include the removal of lead-based paint, the containment or encapsulation of lead-based paint, and the replacement or demolition of lead-painted surfaces or fixtures.

18. COMAR 26.16.01.02B(7) defines a lead-containing substance as “[a]ny paint, plaster, or other surface encapsulation material containing more than 0.50 percent lead by weight calculated as lead metal in the dried solid, or more than 0.7 milligram per square centimeter.”

19. COMAR 26.16.01.02B(4)(a) defines “Contractor” as a company, partnership, corporation, sole proprietorship, association, self-employed individual or other business entity.

20. COMAR 26.16.01.02B(21) defines "Structural steel" as the metallic and related structural components of an industrial, commercial, or public structure or superstructure.

B. Requirement of Accreditation

21. Section 6-1002(a) of the Environment Article mandates that unless a person

is accredited by the Department under this subtitle, that person may not act as a contractor or supervisor for the purpose of providing lead paint abatement services.

22. COMAR 26.16.01.04A(1) provides that unless a person is accredited by the Department under this chapter, the person may not provide lead paint abatement services as a contractor, inspector, lead paint risk assessor, or supervisor.

23. Under COMAR 26.16.01.13C, contractors performing lead abatement services on structural steel must meet the following standards: (1) at least 24 hours prior to beginning a lead paint abatement involving structural steel, the contractor shall notify the Department of the location and start and completion dates for the project, (2) the contractor shall prevent airborne dispersal of lead-contaminated particulate matter, in accordance with COMAR 26.11.06.03,¹ and (3) the contractor shall contain all wastes within the work site or a secure storage area and dispose of wastes in accordance with COMAR 26.13.03.²

C. Hiring of Unaccredited Structural Steel Contractors

24. COMAR 26.16.01.04B further prohibits a person from hiring, contracting, or retaining a person who is not properly accredited by the Department to perform lead abatement services.

¹ COMAR 26.11.06.03C(1) prohibits a person from “causing or permitting emissions from an unconfined source without taking reasonable precautions to prevent particulate matter from becoming airborne.”

² The relevant portion of COMAR 26.13.03 requires the generator of solid waste to determine whether it is a hazardous waste.

D. Civil Penalty Provisions of Title 6, subtitle 10

25. Civil Penalties. Violators are subject to a civil penalty for violations of Title 6, subtitle 10 and the corresponding regulations of up to \$ 25,000 per violation. Md. Code Ann., Env't § 6-422(a).

26. Each day a violation continues is a separate violation under the subtitle. Env't §§ 6-422(a)(2), 6-1005.

Title 9, subtitle 2 – Open Dumping of Solid Waste and Creating a Nuisance

27. The Department regulates the installation, alteration and extension of solid waste acceptance facilities in accordance with the requirements set forth in §§ 9-204 through 9-229 of the Environment Article and COMAR 26.04.07.

28. Definition of Solid Waste. Solid waste is any garbage, refuse, sludge, or liquid from industrial, commercial, mining, or agricultural operations or from community activities. Env't § 9-101(j)(1).

29. Refuse Disposal System. A refuse disposal system is any incinerator, transfer station, landfill system, landfill, solid waste processing facility or other solid waste acceptance facility. Env't § 9-201(e). A permit is required prior to the installation and/or material alteration or extension of a refuse disposal system. Env't § 9-204(d).

30. Prohibition against Installation or Material Alteration or Extension of Refuse Disposal System Without a Permit. A person may not construct or operate a system of refuse disposal without a permit or cause, suffer, allow or permit the construction or

operation of an unpermitted system of refuse disposal on his or her property. Env't § 9-204(d); COMAR 26.04.07.03B(1).

31. Open Dump. An open dump is any land disposal site that is not designed or operated in accordance with the requirements for a sanitary landfill in COMAR 26.04.07. COMAR 26.04.07.02B(19).

32. Prohibition Against Disposal of Solid Waste in an Open Dump. Solid waste may not be disposed of in an open dump and a person may not cause, suffer, allow or permit open dumping on his or her property. COMAR 26.04.07.03B(4).

33. Creating a Nuisance. COMAR 26.04.07.03A prohibits a person from engaging in solid waste handling in a manner which will likely create a nuisance, cause a discharge of pollutants to waters of this State unless otherwise permitted under Environment Article §§ 7-232 or 9-323, impair the quality of the environment, or create other hazards to the public health, safety, or comfort.

34. Enforcement Procedure. The provisions of Title 9, subtitle 2, and the implementing regulations are enforced using the remedies set forth in §§ 9-334 through 9-344 of the Environment Article. Env't § 9-268. Upon showing that a person is violating or about to violate a provision or any regulation under the subtitle, the court shall grant an injunction without requiring a showing of a lack of an adequate remedy at law. For emergencies arising from imminent danger to public health, public welfare, or to the environment, the Department is entitled to sue for an immediate injunction in order to stop

the pollution or other activity causing the danger.

35. Injunctive Relief. Section 9-339 of the Environment Article authorizes the Department to bring an action for injunction against any person who violates a provision of Title 7, subtitle 2 or any associated regulation.

36. Civil Penalties. Section 9-342 of the Environment Article allows the Department to request up to \$10,000 in civil penalties for violations of the provisions of the subtitle or related regulations. Each day a violation occurs is a separate violation.

Title 7, subtitle 2 – Hazardous Materials and Hazardous Substances

A. Hazardous Waste Determination

37. “Solid Waste” under Title 7, subtitle 2 of the Environment Article is defined as (1) any abandoned material or substance which is disposed of, burned, or incinerated or accumulated, stored, or treated before or in lieu of being disposed of, burned, or incinerated; (2) Material or substance which is recycled or accumulated, stored, or treated before recycling; or (3) Material or substance which is considered inherently waste-like. Env’t § 7-201(u).

38. COMAR 26.13.02.02A also defines solid waste as a discarded material, which is any material that is (1) abandoned, (2) recycled, (3) considered inherently waste like, or (d) a military munition identified as solid waste in accordance with COMAR.

39. “Generator” means any person, by site, whose act or process produces hazardous waste identified or listed in COMAR 26.13.02 or whose act first causes a hazardous waste to become subject to regulation.

40. COMAR 26.13.03.02 further requires that a person who generates a solid waste as defined in COMAR 26.13.02.02 shall determine whether that waste is a hazardous waste. The person shall “[m]ake an *accurate* determination as to whether that waste is a hazardous waste, with an “accurate determination” being a determination that allows the person to determine the requirements that are applicable to the waste and the generator of the waste under the provisions of COMAR 26.13.01—26.13.10 and federal hazardous waste regulations...” COMAR 26.13.03.02A(1)(a)(emphasis added).

41. A determination that waste is hazardous waste shall be made “at the point of waste generation before any dilution, mixing, or other alteration of the waste occurs...” COMAR 26.13.03.02A(2)(a).

42. COMAR 26.13.03.02-1 sets forth procedures that a person shall follow in determining whether a solid waste is a hazardous waste.

43. COMAR 26.13.03.02-1D(1) allows a person to determine whether a waste exhibits a characteristic of hazardous waste by applying knowledge of the characteristics of the waste, by testing the waste using methods specified in the regulations, or by a combination of these two methods.

44. Under COMAR 26.13.03.02-1D(4), the results from a properly performed

test using a test method that is specified in COMAR 26.13.02.10 - .14 “are definitive for determining the regulatory status of the waste.”

45. Under COMAR 26.13.03.02-1D(5), “[i]f a person who is required to characterize a waste concludes, based on the person’s knowledge of the characteristics of the waste, that the waste does not exhibit a characteristic of hazardous waste specified in COMAR 26.13.02.10—.14, but subsequent testing of a representative sample of the waste using a test method specified in COMAR 26.13.02.10—.14 shows the waste to exhibit a characteristic of hazardous waste, the person is subject to any liability that applies as a result of the person’s mischaracterization of the waste.”

46. When the producer of solid waste uses “generator knowledge” to conclude that a waste is not a characteristic hazardous waste, if subsequent testing finds that conclusion to have been wrong, the person has failed to satisfy the requirement of COMAR 26.13.03.02A(1)(a) to make an accurate determination as to whether the waste is a hazardous waste. COMAR 26.13.03.02-1D(5)

Small Quantity Generators

47. Those who do not meet any of the criteria in COMAR 26.13.03.01A-2 are referred to as “Maryland – defined small quantity generators,” and are subject to COMAR 26.13.02.05, rather than 26.13.03, except:

- (a) For the requirements of Regulations .05-3 — .05-5 of this chapter, regarding episodic generation; and
- (b) As specified in COMAR 26.13.02.05;

48. See COMAR 26.16.03.01A-3(1)-(2).COMAR 26.13.02.05D(1) states that the small quantity generator “[s]hall comply with COMAR 26.13.03.02 - .02-2, which concern hazardous waste determination.” A small quantity generator must therefore also make an *accurate* determination of hazardous waste pursuant to COMAR 26.13.03.02A(1)(a).

49. Injunctive Relief. Section 7-263 of the Environment Article authorizes the Department to bring an action for injunction against any person who violates a provision of Title 7, subtitle 2 or any associated regulation.

50. Civil Penalties. Violators are subject to a civil penalty for violations of Title 7, subtitle 2 and the corresponding regulations of up to \$ 25,000 per violation. Env’t § 7-266(a).

51. Each day a violation continues is a separate violation under the subtitle. Env’t § 7-266(a).

B. Controlled Hazardous Substances – Prohibited Acts

52. Section 7-224 of the Environment Article prohibits a person from storing, discharging, treating, or disposing of a controlled hazardous substance in this State except in a controlled hazardous substance facility, or in accordance with the Subtitle.

53. “Controlled hazardous substance” means (1) any hazardous substance that the Department identifies as a controlled hazardous substance under this Title 7, subtitle 2 and associated COMAR; or (2) low-level nuclear waste.

54. COMAR 26.13.01.03B(15) defines “discharge” or “hazardous waste discharge” to mean the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous waste into or on any land or water.

55. COMAR 26.13.01.03B(15) defines “disposal” to mean the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that the solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

56. COMAR 26.13.01.03B(10-1) defines “Controlled hazardous substance” as a hazardous waste as defined in COMAR 26.13.02, except as provided in COMAR 26.13.02.06.

57. Pursuant to COMAR 26.13.02.03A, a solid waste is a hazardous waste if:

- 1) It is not excluded from regulation as a hazardous waste under Regulation .04-1 of this chapter; and
- 2) It meets any of the following criteria:
 - (a) It exhibits any of the characteristics of hazardous waste identified in this chapter except as otherwise provided in §A-1 of this regulation concerning waste from the extraction, beneficiation, and processing of ores and minerals;
 - (b) It is listed in Regulations .15—.19 of this chapter and has not been excluded from the lists by:
 - (i) COMAR 26.13.01.04A and C;
 - (ii) Regulation .16A(1) of this chapter; or
 - (iii) Regulation .17A(1) of this chapter;

(c) It is a mixture of solid waste and a hazardous waste that is listed in this chapter solely because it exhibits one or more of the characteristics of ignitability, corrosivity, or reactivity identified in Regulations .11—.13 of this chapter unless the:

(i) Resultant mixture no longer exhibits any characteristic of hazardous waste as identified in this chapter; or

(ii) Solid waste is excluded from regulation under Regulation .04-1A(7) of this chapter and the resultant mixture no longer exhibits any characteristic of hazardous waste identified in this chapter for which the hazardous waste in the mixture was listed in this chapter;

(d) It is a mixture of solid waste and one or more hazardous wastes listed in this chapter and has not been excluded from being regulated as a hazardous waste under COMAR 26.13.01.04 or A(2)(c), A-2, or F of this regulation; or

(e) Except as provided in COMAR 26.13.02.04-1A(11), it is used oil which contains more than 1,000 parts per million total halogens and is therefore presumed to have been mixed with halogenated hazardous waste listed in Regulations .16—.19 of this chapter.

58. COMAR 26.13.02.14 states that:

A. A solid waste, except manufactured gas plant waste, exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure, Test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846, which is incorporated by reference in COMAR 26.13.01.05A(4), the extract from a representative sample of the waste contains any of the contaminants listed in Table 1 at the concentration equal to or greater than the respective value given in that table. When the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering using the methodology outlined in Test Method 1311, is considered to be the extract for the purpose of this section.

B. A solid waste that exhibits the characteristic of toxicity has the EPA hazardous waste number specified in the following Table 1, which corresponds to the toxic contaminant causing it to be hazardous...

59. Under Table 1 of COMAR 26.13.02.14, lead carries an EPA hazardous waste number of D008, and the maximum regulatory level for concentration of contaminants for the Toxicity Characteristic for lead is 5.0mg/L.

C. Cost Recovery Under Hazardous Substance Control Fund

60. Under § 7-220 of the Environment Article, the Department is authorized to use the State Hazardous Substance Control Fund for activities expended in relation to “identifying, monitoring, and controlling the proper disposal, storage, transportation, or treatment of hazardous substances . . . ” Env’t § 9-268(a).

61. Under § 7-221 of the Environment Article, expenditures made by the Department from the State Hazardous Substance Control Fund in response to a release or a threatened release of a hazardous substance at a particular site shall be reimbursed to the Department for the State Hazardous Substance Control Fund by the responsible person for the release or the threatened release.

62. The definition of a “responsible person” includes any person who is the owner or operator of a site containing a hazardous substance. Env’t § 7-201(t)(1).

63. “Hazardous substance” means any substance: (1) defined as a hazardous substance under § 101(14) of the Federal Act³, or (2) identified as a controlled hazardous substance by the Department in COMAR. Env’t § 7-201(l).

³ “Federal Act” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”), as amended through January 1, 2003. Lead and lead acetate are noted hazardous substances under the Federal Act.

Title 9, subtitle 3– Water Pollution Control

64. The Maryland General Assembly has enacted a comprehensive licensing and regulatory system governing the discharge of pollutants and other activities that impact waters of the State, including discharges to streams and river channels, and their 100-year flood plains. The Department implements and enforces this system under §§ 1-301(a) and 9-319 of the Environment Article, Annotated Code of Maryland.

65. A person may not discharge any pollutant into waters of the State unless authorized by Title 4, subtitle 4, or by Title 9, subtitle 3 of the Environment Article. Env't. § 9-322.

66. Title 9, subtitle 3 of the Environment Article declares the policy of the State to improve, conserve, and manage the quality of the waters of the State for public supplies, propagation of wildlife, fish and aquatic life, and domestic, agricultural, industrial, recreational, and other legitimate beneficial uses, to ensure that waste is not discharged to waters of the State without necessary treatment, to prevent, abate, and control water pollution, and to promote conservation consistent with the Clean Water Act and the Chesapeake Bay Agreement. Env't. § 9-302(b).

67. Under Title 9, subtitle 3 and COMAR 26.08.04, a person may not discharge any pollutant into waters of the State without a discharge permit⁴ issued by the Department. Env't.. § 9-323; COMAR 26.08.04.01B.

⁴ The Clean Water Act, 33 U.S.C. §§ 1251 through 1376, prohibits the discharge of pollutants into waters of the United States unless the U.S. Environmental Protection

68. Section 9-101(l) of the Environment Article defines “Waters of the State” to include both surface and underground waters within the boundaries of the State subject to its jurisdiction, including that part of the Atlantic Ocean within the boundaries of the State; the Chesapeake Bay and its tributaries; and all ponds, lakes, rivers, streams, public ditches, tax ditches, and public drainage systems within the State, other than those designed and used to collect, convey, or dispose of sanitary sewage. In addition, the flood plain of free-flowing waters determined by the Department of Natural Resources on the basis of the 100-year flood frequency is included as waters of the State.

69. “Discharge” is defined as the addition, introduction, leaking, spilling, or emitting of a pollutant into waters of the State; or placing a pollutant in a location where the pollutant is likely to pollute waters of the State. Env’t. § 9-101(b); COMAR 26.08.01.01B(20).

70. “Pollution” is defined as any contamination or other alteration of the physical, chemical, or biological properties of any waters of the State, including a change in temperature, taste, color, turbidity, or odor of the waters, or the discharge or deposit of any organic matter, harmful organism, or liquid, gaseous, solid, radioactive, or other substance into the waters of this State, that will render the waters harmful or detrimental

Agency issues a National Pollutant Discharge Elimination System permit. The EPA may delegate its permitting authority to a state, 33 U.S.C. § 1342(b), and has done so to the State of Maryland, which has vested that authority in the Secretary of the Department. *See, e.g.,* Env’t. § 9-253. The Department thus issues permits authorizing discharges to waters of the United States under both federal and State law.

to: (1) public health, safety, or welfare; (2) domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; (3) livestock, wild animals, or birds; or (4) fish or other aquatic life. Env't. § 9-101(h); COMAR 26.08.01.01B(67).

71. Under § 9-342 of the Environment Article, a person who violates any provision of Title 9, subtitle 3 or any rule, regulation, order, or permit adopted or issued under Title 9, subtitle 3 is liable for a civil penalty not exceeding \$10,000 to be collected in a civil action brought by the Department. Each day a violation occurs is a separate violation.

72. Under § 9-339 of the Environment Article, this Court may issue an injunction on a showing that a person is violating or is about to violate Title 9, subtitle 3 or any rule, regulation, order, or permit adopted or issued by the Department under Title 9, subtitle 3 without the necessity of showing lack of an adequate remedy at law.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

Television Tower Inc. and the Television Hill Tower

73. TTI is the owner of the Tower, located at 3723 Malden Avenue in Baltimore City, otherwise known as Television Hill.

74. At the base of Television Hill, approximately ½ mile east-southeast of the Tower, lies the Jones Falls, a Use IV waterway of the State. Use IV waterways are classified to support recreational trout fishing.

75. TTI is a Maryland Corporation comprised of and formed by television and broadcast companies for the Baltimore City Metropolitan area. These companies include WJZ-TV, WBAL-TV, and WMAR-TV.

76. Various storm drains near the vicinity of the Tower and around the surrounding community, including a storm drain behind the WBAL-TV broadcast station that is located directly adjacent to and downhill from the Tower, lead into waters of the state.

77. The Tower exists for the sole purpose of outputting signals from the broadcast companies' stations.

78. The principal office of TTI is at Television Hill, Baltimore, 21211, which is the location of the Tower.

79. TTI officers and agents are comprised of employees and executives in the broadcast stations referenced in Paragraph 75 above.

80. At least two of the broadcast stations, and the offices of some officers and/or agents for TTI, are physically located directly adjacent to the Tower, with a clear and unobstructed view of the activities referenced in this Second Amended Complaint.

81. The Tower is a commercial structure for commercial activities.

82. The Tower is approximately 1,000 feet tall.

83. There are three main columns comprising the Tower: A, B and C.

84. Most of the Tower (730 feet in length) was built in 1958. The remaining

portion of the structure (270 feet in length) was an addition built in 1964.

85. The Tower is a commercial steel structure covered and protected by paint.

86. The color of paint on the Tower is bright red.

Skyline Tower Painting, Inc.

87. Skyline is a company offering painting services for towers, including communication towers such as the Tower that is currently the subject of this Second Amended Complaint.

88. Skyline is a corporation formed under the laws of Colorado and based in Nebraska.

89. Skyline offers tower painting services throughout the United States.

90. Skyline was not accredited as a contractor in Maryland to provide lead paint abatement services during the dates of violation attributed to Skyline.

91. None of Skyline's workers or employees was accredited to perform lead paint abatement services during the dates of violation attributed to Skyline.

History and Uncontained Tower Work Resulting in Lead-Based Chips Released and Disposed into Surrounding Communities

92. In 2012, TTI ordered lead paint testing and discovered that the Tower contained lead-containing substances, specifically lead-based paint.

93. Lead and lead acetate are hazardous substances as defined under § 7-201(1) of the Environment Article.

94. In 2019, a report from a required periodic maintenance inspection of the

Tower identified peeling paint throughout the Tower and stated that the areas of deteriorated paint would need to be scraped and repainted.

95. In 2022, TTI contracted with and hired Skyline to conduct removal and remediation of lead-containing paint, and therefore lead abatement, of the Tower.

96. The contract and proposal of work called for Skyline to paint the entire Tower, including three ice bridges, and included paint prepping such as scraping, sanding, and wire brushing flaking paint, in addition to other preparation deemed as necessary and approved by TTI. The proposal of work also contained language referencing the application of a “lead neutralizer” to flaking paint and then vacuum scraping those treated areas.

97. Skyline was not accredited to perform lead abatement services in Maryland at the time of the violations alleged in this Second Amended Complaint. Therefore, Skyline violated § 6-1002(a) of the Environment Article and COMAR 26.16.01.04A(1).

98. TTI failed to comply with COMAR 26.16.01.04B by hiring a contractor that was not accredited to perform lead abatement services.

99. On or about May 28, 2022, Skyline, acting as the agent and contractor of TTI, began a project involving abatement of the Tower by removing paint from the Tower through scraping flaking paint and/or conducting uncontained hydroblasting with equipment exerting 4,000 pounds of pressure per square inch (“psi”). The work on the Tower continued until on or about June 20, 2022. Specifically, lead paint abatement

occurred on the following 18 dates:

May 28, 2022, through June 1, 2022;
June 3, 2022, through June 7, 2022;
June 9, 2022, through June 10, 2022;
June 13, 2022, through June 15, 2022;
June 17, 2022; and
June 19, 2022, through June 20, 2022.

100. Little-to-no containment methods were utilized during the project, and the Tower paint removal resulted in paint dust particulates being released and paint chips being discarded to the ground and into the surrounding community.

101. Skyline failed to notify the Department of its activities on the Tower prior to commencement of work, in violation of COMAR 26.16.01.13C(1).

102. As they generated solid waste that was not subject to any exemptions for hazardous waste determination, Defendants were subject to the provisions of either COMAR 26.13.03, *et seq.* or COMAR 26.13.02.05, *et seq.*,⁵ and therefore required to make a determination of hazardous waste in accordance with COMAR 26.13.03.02A(1).

103. Since Defendants had affirmative knowledge that existing paint on the tower contained lead, a physical assessment through a Toxicity Characteristic Leaching Procedure (“TCLP”) or similar testing prior to performing work on the tower would have been the only possible and definitive method to determine whether the solid waste

⁵ COMAR 26.13.03.01A-3 states that any person not meeting criteria for full regulation under COMAR 26.13.03 is a small quantity generator regulated under COMAR 26.13.02.05. However, COMAR 26.13.03.01A-3 requires small quantity generators to abide by COMAR 26.13.02.05, which further requires that they make a hazardous waste determination as required by COMAR 26.13.03.02A. *See* COMAR 26.13.02.05D(1).

generated was or was not hazardous waste.

104. Defendants failed to make an accurate hazardous waste determination on the paint waste generated from the paint remediation activities, either at or prior to the initial generation of solid waste in the form of paint chips and debris, or at any time during the three week duration of the project, in violation of COMAR 26.13.03.02A(1). Despite knowledge that the Tower paint contained lead, a known hazardous substance, Defendants neither conducted any physical testing or sampling of the solid waste to be generated, nor did they use any other alternative method of determining whether the solid waste generated was hazardous waste at the point and time the waste was generated.

105. Hydroblasting was observed by a member of the community as early as June 5, 2022.

106. On June 9, 2022, a WBAL-TV employee posted to public social media that that someone was “power blasting” paint off the Tower.

107. On or about June 17, 2022, Defendants began receiving complaints from the community surrounding the Tower about paint scrapings scattered throughout the area.

108. On June 21, 2022, the Department received a complaint regarding paint fragments from the Tower that had fallen into the nearby and surrounding neighborhoods. Upon inspection that day, the Department noted that a large concentration of red paint chips was scattered and located in the immediate and surrounding vicinity of the Tower. Areas that paint scrapings were found include a child daycare center, a local playground and park,

a college athletic field, and various residences as far as one-half mile away.

109. Also on June 21, 2022, red paint chips were observed in abundance in the parking lots of the television broadcast stations, in and around employee vehicles.

110. A Department inspector further noted on or about June 21, 2022, that a large concentration of paint scrapings was located throughout the immediate vicinity and scattered downhill towards the WBAL station building, behind which a storm drain is located. The inspector observed that concrete areas appeared to be stained bright red and heading downhill.

111. At the time of the Department's initial investigation, Skyline employees identified to the Department the following details and dates of work that involved the removal of paint by either scraping or hydroblasting of the Tower and attached structures:

<u>Date</u>	<u>Work performed</u>
5/28/2022	started to scrape flaking paint from Tower
5/29/2022	continued to scrape from bottom 450 feet
5/30/2022	scraped and began to paint ice bridges
5/31/2022	started scraping around the 300-foot mark on the Tower
6/1/2022	scraped an additional 60 feet
6/3/2022	continued to scrape Tower
6/4/2022	continued to scrape Tower
6/5/2022	scraped under one of the platforms
6/6/2022	some employees scraped under platform and others pressure washed
6/7/2022	pressure washed Tower and ice bridges
6/9/2022	pressure washed near top of Tower
6/10/2022	pressure washed upper part of Tower and continued to scrape washed areas
6/13/2022	pressured washed Tower
6/14/2022	continued to pressure wash Tower and scrape ice bridges
6/15/2022	continued to pressure wash Tower and scrape ice bridges
6/17/2022	continued to pressure wash rest of Tower except top 5% and candelabra
6/19/2022	pressured washed ice bridges

6/20/2022 prepped ice bridges and scraped Tower.

112. A Skyline representative further represented to the Department that the initial plan had been to collect and dispose of the discarded paint chips *after* all remediation and painting had been completed. Little to no methods of containment had been used to collect the discarded materials during the project.

113. In addition to the initial complaint made to the Department, multiple additional residents further reported red paint chips on their property. To date, at least eighty-four (84) residences have reported the presence of paint chips from the Tower on their properties.

114. The paint chips disposed of and deposited onto the ground from the Tower were solid waste in accordance with §§ 9-101(j)(1) and 7-201(u) of the Environment Article.

115. The disposal of paint chips into the surrounding grounds and communities resulted in the creation of a land disposal site which was not operated in accordance with the requirements for a sanitary landfill, constituting an open dump, as defined by COMAR 26.04.07.02B(19).

116. Defendants, individually and/or through the actions of their agents, illegally disposed of paint chips in an open dump on the Tower grounds and surrounding properties, in violation of COMAR 26.04.07.03B(4).

117. TTI also caused, suffered and allowed the disposal of paint chips in an open

dump on its property, in further violation of COMAR 26.04.07.03B(4).

118. Also, on or about June 22, 2022, the City of Baltimore issued a stop work order to TTI requiring TTI and its contractor and agent to halt commercial pressure washing on the Tower without proper permits. The City also noted the presence of paint chips falling into surrounding grounds, including a playground.

119. On June 22, 2022, the Department collected fallen paint chips for sampling at the bases of columns A, B, and C, and laboratory testing determined that the paint chips sampled on all columns were positive as a lead-containing substance.

120. Also on June 22, 2022, the Department instructed Defendants to make a hazardous waste determination of the paint chips debris that had been disposed from the Tower, as none had been made prior to that day.

121. Upon information and belief, the force of water used in the hydro-blasting activities on the Tower reached up to 4,000 psi and, coupled with strong winds from exceptionally high elevation, forced leaded paint chips to be disposed onto a large area containing hundreds of residences.

122. TTI did not begin any cleanup of paint chips from the community until June 21, 2022, after receiving community complaints and an initial investigation by the Department and local authorities. Clean-up efforts of the paint chip waste are not complete and remain ongoing.

123. On August 17, 2022, in response to the Department's directive, TTI arranged

for testing of collected waste drums for the purpose of making a hazardous waste determination. The drums contained not only paint chip waste from the Tower but also included various types of comingled waste such as other trash and debris, and therefore did not represent testing at the point of generation as required by COMAR 26.13.03.02A(2)(a).

124. Also on August 17, 2022, TTI collected paint samples from the Tower and conducted TCLP testing on five samples at the request of the Department. All of the samples contained lead from 2% to 5% concentration by weight. Three of five samples were characterized as hazardous waste based on their exhibiting the toxicity characteristic for lead. Therefore, had Defendants conducted an accurate hazardous waste determination at the point of generation, they would have determined that some or all of the waste generated would be hazardous waste warranting proper handling to prevent the release of the material to the environment.

125. Defendants did not make a hazardous waste determination at the point of generation, but even if they had, failure to make an accurate determination rendered them liable under COMAR 26.13.03.02-1D(5) and COMAR 26.13.03.02A(1)(a).

126. Further testing using the TCLP method was conducted on paint chips collected from August 2022 to October 2023, from drums of waste created during TTI's cleanup efforts. Almost all samples were identified by this testing as exhibiting the hazardous waste toxicity characteristic for lead and therefore a controlled hazardous substance under § 7-201(b).

127. Laboratory analyses using the TCLP method on multiple samples of paint chips disposed or discharged from the Tower into the surrounding community has shown that the paint chips exhibited the hazardous waste toxicity characteristic for lead, meaning the paint chips were a controlled hazardous substance and hazardous waste as defined under Title 7, subtitle 2 and COMAR 26.13. Since the disposal or discharge was not conducted in a controlled hazardous substance facility or in accordance with the subtitle, this constituted a violation of § 7-224 of the Environment Article.

128. Due to winds and dynamic weather conditions, as well as the continuing instability of the unremediated Tower paint, some previously-cleared areas have experienced the additional disposal of new paint chip waste. The appearance and depositing of new chips are occurring regularly to this day, both on the Tower grounds and surrounding properties.

129. On August 17, 2022, Department personnel conducted a field site visit to the Tower and surrounding community and observed paint chip fragments from the Tower in various locations, including on TTI's property.

130. On September 2, 2022, Department personnel conducted a field site visit to the Tower and surrounding community and observed paint chip fragments from the Tower in various locations.

131. On November 9, 2022, Department personnel conducted a field site visit to the Tower and surrounding community and observed paint chip fragments from the Tower

in various locations.

132. On December 20, 2022, Department personnel conducted a field site visit to the Tower and surrounding community and observed paint chip fragments from the Tower in various locations, including on TTI's property.

133. In February 2023, the Department began undertaking and conducting soil sampling around the Tower to assess community lead contamination in the soil due to the disposal of leaded paint into the community. Paint chips from the Tower were observed on the following days of sampling: February 1, February 2, February 6, February 8, February 23, and February 24.

134. During soil sampling, Department personnel observed paint chip fragments from the Tower in various locations, including on TTI's property.

135. On May 2, 2023, MDE representatives conducted a site visit and observed additional paint chip fragments at a daycare center, the Rockrose City Park, and other locations around the area.

136. In or around May or June 2023, TTI, through a new contractor and other consultants, restarted remediation work on the Tower using a containment system. The work was conducted under a Lead Health Protection Plan that set forth procedures for ensuring proper containment of any paint chips or particulates and proper disposal and assessment of hazardous conditions. The Lead Health Protection Plan was intended to account for the regular monitoring and collection of escaped debris or materials from the

Tower project.

137. On July 21, 2023, inspectors with the Department's Water and Science Administration, in coordination with the Land and Materials Administration, conducted an inspection of areas surrounding the Tower to determine if paint chips had fallen in, or were in a position likely to pollute, waters of the State. During their inspection, Department inspectors found and documented red paint chips in gutter pans near storm drains leading directly to the Jones Falls, on streets, including Rockrose Avenue, Malden Avenue, Clipper Road, Girard Avenue, Hooper Avenue, Druid Park Drive, West 41st Street, all serviced by storm drains leading directly to the Jones Falls, and chips that had been deposited directly into the Jones Falls. In all, Department's inspectors located and documented more than 70 paint chips located in, or areas likely to pollute, waters of the State.

138. Department personnel have observed on multiple occasions the containment system on the Tower in a loose condition that would allow for escape of collected debris and paint. The condition of the containment system did not adhere to the design plans.

139. TTI and/or its agents were advised that the containment system had been observed in a loose condition on more than one occasion, including August 10, 2023.

140. On or about June 12, 2024, MDE representatives informed TTI and/or its agents that paint chips from the Tower remediation project had been observed in and around the surrounding community. The paint had escaped the containment system and had not been removed in accordance with the Lead Health Protection Plan. MDE inquired

whether there was a plan to secure the containment system but was not made aware of any current plans by TTI's agents.

141. Also on June 12, 2024, Department personnel observed the containment system in a loose condition and flapping in the wind. The Department observed paint chips on TTI's property as well as various locations in the surrounding community.

142. On June 12, 2024, the Department collected 11 paint chip samples from the Tower and surrounding community. Four of the samples tested positive for lead content between .83% to 6.5% by weight. Two of those positive samples came from a nearby playground.

143. On June 14, 2024, an MDE representative sent to TTI's agent and Director of Engineering an email requesting that TTI's consultants/agents identify the extent of the containment system failures to prevent airborne dispersal of particulate matter and to contain all wastes within the work area. MDE once again communicated that paint chip fragments were observed being released from the containment area and into the surrounding community.

144. On June 27, 2024, Department representatives conducted a site visit with TTI's agents and consultants in order to observe the procedures for clean-up of paint chips in the community surrounding the Tower. Red paint chips were observed and collected by TTI's agents in various areas of the walkthrough.

145. On July 22, 2024, TTI received a complaint from a community resident and

owner of a family daycare center in close proximity to the Tower, stating that many new red paint chip fragment debris had appeared on the property, surrounding streets, and sidewalks over the weekend. The daycare center had also been subject to fallen paint chip debris when the first complaints of paint chips from the Tower occurred in 2022.

146. On July 23, 2024, a Department representative conducted a site visit to the family daycare that had made the complaint the day prior. The property was occupied by numerous young children, several of whom appeared to be under the age of six. The daycare center owner stated that paint chips had been located throughout the property including the front yard, and throughout the rear yard which serves as a playground for the family home daycare business. Paint chips were observed on the property as of that morning.

147. Also on July 23, 2024, Department personnel observed paint chips in the surrounding community.

148. As of that date, neither TTI nor its representatives had responded to the Department's previous requests for an assessment of the extent of the containment system failure or presented a corrective action plan or report of the extent of failure and plans to prevent further release.

149. In addition to the dates on which the Department observed paint chips in the community, from July 8, 2022, to February 7, 2025, TTI's clean-up contractor has collected paint chips from the areas surrounding the Tower on at least another 249 separate days.

More paint chips are continuing to be identified and collected by TTI's contractor on each outing.

150. As of this date, sections of the Tower remain in an unstabilized and uncontained condition, with bare areas and deteriorating paint that is delaminating and being deposited in the surrounding community.

151. As of this date, the unstabilized Tower paint and disturbances from work on the Tower continue to result in paint chips being deposited into waters of the State, and/or deposited in and around storm drains leading to waters of the State.

152. Lead-containing paint is a known and recognized threat to public health. It is the most common source of lead exposure in children, either through ingestion or inhalation of lead paint dust. Additionally, repeated low-level exposure to lead can bring cumulative and aggregated effects. Due to their developmental stages, children six years of age and younger are particularly at risk of impact from lead exposure, the effects of which are irreversible.

153. In addition to the public health impacts of lead paint, other negative impacts exist to the environment and other organisms. Organisms in soil or water may ingest lead-containing paint and dust, resulting in negative effects on their vital functions and, due to bioaccumulation, can impact organisms or animals throughout the ecosystem and food chain.

154. Defendants' failure to ensure the Tower abatement was performed by a

properly accredited contractor and/or to ensure proper work practices were employed during the abatement of the Tower resulting in the deposition of leaded paint chips throughout the community, as well as the continued delay in the containment and stabilization of the Tower, and failure to properly contain wastes generated from the Tower during ongoing remediation, creates and continues to create an imminent danger to the surrounding communities, especially to children and pregnant women residing in the nearby houses or frequenting parks, businesses, or public areas.

COUNT I
(TTI - Failure to Hire an Accredited
Lead Abatement Service Provider)

155. The Department realleges and incorporates by reference the allegations in all prior paragraphs of this Second Amended Complaint.

156. COMAR 26.16.01.04B prohibits a person from hiring, contracting, or retaining a person who is not properly accredited by the Department to perform lead abatement services.

157. TTI hired an unaccredited contractor to perform lead abatement services on at least the following 18 days:

May 28, 2022, through June 1, 2022;
June 3, 2022, through June 7, 2022;
June 9, 2022, through June 10, 2022;
June 13, 2022, through June 15, 2022;
June 17, 2022; and
June 19, 2022, through June 20, 2022.

158. Injunctive relief is warranted to require TTI to remediate the resulting harm

to human health and the environment from failing to hire an accredited contractor and to stop the ongoing release of lead paint chips into the environment.

159. Sections 6-1005 and 6-422 and of the Environment Article further vest this Court with the authority to issue a civil penalty in the amount of up to \$25,000 per day for violation of Title 6, subtitle 10 and associated regulations.

COUNT II
(TTI – Causing, Suffering, Allowing,
or Permitting Open Dumping)

160. The Department realleges and incorporates by reference the allegations in all prior paragraphs of this Second Amended Complaint.

161. Under COMAR 26.04.07.03B(4), solid waste may not be disposed of in an open dump and a person may not cause, suffer, allow or permit open dumping on his or her property. An open dump is any land disposal site that is not designed or operated in accordance with the requirements for a sanitary landfill.

162. From June 5, 2022, through June 21, 2022, and continuing until paint chips from the Tower are no longer being deposited on TTI's property, TTI caused, suffered, allowed, or permitted an open dump on its property due to uncontained hydroblasting activities and the continued release of unstabilized paint.

163. TTI continues as of this date to cause, suffer, allow, or permit open dumping on its property in the form of discarded paint chips.

164. Injunctive relief is warranted to require TTI to stop the ongoing open

dumping of solid waste, and to conduct cleanup of the areas in which an open dump exists.

165. Sections 9-339 and 9-342 of the Environment Article vest this Court with the authority to issue an injunction and to assess civil penalties of up to \$10,000 per day for any of the violations alleged in this Count.

COUNT III
(Skyline – Providing Lead Paint Abatement
Services Without Accreditation)

166. The Department realleges and incorporates by reference the allegations in all prior paragraphs of this Second Amended Complaint.

167. COMAR 26.16.01.04A(1) provides that unless a person is accredited by the Department under this chapter, the person may not provide lead paint abatement services as a contractor, inspector, lead paint risk assessor or supervisor.

168. Skyline performed lead abatement services without accreditation on at least the following 18 days:

May 28, 2022, through June 1, 2022;
June 3, 2022, through June 7, 2022;
June 9, 2022, through June 10, 2022;
June 13, 2022, through June 15, 2022;
June 17, 2022; and
June 19, 2022, through June 20, 2022

169. Injunctive relief is warranted to require Skyline to remediate the resulting harm to human health and the environment from performing lead abatement services without proper accreditation.

170. Sections 6-1005 and 6-422 of the Environment Article further vest this Court

with the authority to issue a civil penalty in the amount of up to \$25,000 per day for violation of Title 6, subtitle 10 and associated regulations.

COUNT IV
(Skyline – Failure to Notify the Department Prior to
Conducting Lead Abatement)

171. The Department realleges and incorporates by reference the allegations in all prior paragraphs of this Second Amended Complaint.

172. COMAR 26.16.01.13C(1) requires contractors performing lead abatement services on structural steel to, at least 24 hours prior to beginning a lead paint abatement involving structural steel, notify the Department of the location and start and completion dates for the project.

173. Skyline did not notify the Department prior to commencing its project on the Tower involving lead abatement that began on May 28, 2022.

174. Sections 6-1005 and 6-422 and of the Environment Article further vest this Court with the authority to issue a civil penalty in the amount of up to \$25,000 per day for violation of Title 6, subtitle 10 and associated regulations.

COUNT V
(Skyline – Failure to Contain Particulate Matter
in accordance with COMAR)

175. The Department realleges and incorporates by reference the allegations in all prior paragraphs of this Second Amended Complaint.

176. COMAR 26.16.01.13C(2)(a) requires contractors performing lead abatement

services on structural steel to prevent airborne dispersal of lead-contaminated particulate matter, in accordance with COMAR 26.11.06.03.

177. COMAR 26.11.06.03C(1) prohibits a person from “causing or permitting emissions from an unconfined source without taking reasonable precautions to prevent particulate matter from becoming airborne.”

178. Skyline conducted uncontained and uncontrolled work, including hydroblasting, of lead-contaminated paint from the Tower and caused an uncontrolled release of lead-based paint dust and particulate matter on at least the following dates:

June 5, 2022;
June 6, 2022, through June 7, 2022;
June 9, 2022, through June 10, 2022;
June 13, 2022, through June 15, 2022;
June 17, 2022; and
June 19, 2022, through June 20, 2022.

179. Injunctive relief is warranted to require Skyline to remediate the resulting harm to human health and the environment from failing to properly contain the airborne dispersal of lead-contaminated particulate matter.

180. Sections 6-1005 and 6-422 and of the Environment Article further vest this Court with the authority to issue a civil penalty in the amount of up to \$25,000 per day for violation of Title 6, subtitle 10 and associated regulations.

COUNT VI
(Skyline – Failure to Properly Contain Waste)

181. The Department realleges and incorporates by reference the allegations of all

prior paragraphs of this Second Amended Complaint.

182. COMAR 26.16.01.13C(2)(b) requires contractors performing lead abatement services on structural steel to contain all wastes within the work site or a secure storage area and dispose of wastes in accordance with COMAR 26.13.03.⁶

183. Due to uncontained and uncontrolled work, including hydroblasting of lead-based paint from the Tower, Skyline failed to contain all wastes within the work site or a secure storage area on at least the following dates:

June 5, 2022;
June 6, 2022, through June 7, 2022;
June 9, 2022, through June 10, 2022;
June 13, 2022, through June 15, 2022;
June 17, 2022; and
June 19, 2022, through June 20, 2022.

184. Waste from the activities continues to remain in an uncontained and unsecured manner as of the filing of this Second Amended Complaint.

185. Injunctive relief is warranted to require Skyline to remediate the resulting harm to human health and the environment from failing properly to contain the airborne dispersal of lead-contaminated particulate matter.

186. Sections 6-1005 and 6-422 and of the Environment Article further vest this Court with the authority to issue a civil penalty in the amount of up to \$25,000 per day for violation of Title 6, subtitle 10 and associated regulations.

⁶ The relevant portion of COMAR 26.13.03 requires the generator of solid waste to determine whether a solid waste generated is a hazardous waste.

COUNT VII
(TTI and Skyline - Disposing of Solid Waste in an Open Dump)

187. The Department realleges and incorporates by reference the allegations in all prior paragraphs of this Second Amended Complaint.

188. Under COMAR 26.04.07.03B(4), solid waste may not be disposed of in an open dump and a person may not cause, suffer, allow or permit open dumping on his or her property. An open dump is any land disposal site that is not designed or operated in accordance with the requirements for a sanitary landfill.

189. Skyline and TTI, either directly or through the actions of its agents, disposed of solid waste in the form of paint chips discarded into an open dump on at least the following 11 days:

June 5, 2022;
June 6, 2022, through June 7, 2022;
June 9, 2022, through June 10, 2022;
June 13, 2022, through June 15, 2022;
June 17, 2022; and
June 19, 2022, through June 20, 2022.

190. TTI, either directly or through the actions of its agents, additionally discarded solid waste in the form of paint chips into an open dump on at least the following days:

August 17, 2022
September 2, 2022
November 9, 2022
December 20, 2022
February 1, 2023
February 2, 2023
February 6, 2023
February 8, 2023

February 23, 2023
February 24, 2023
May 2, 2023
July 21, 2023
June 12, 2024
June 27, 2024
July 20-July 23, 2024.

191. TTI also, either directly or through the actions of its agents, disposed of or discarded solid waste in the form of paint chips into an open dump on an additional 249 days from July 8, 2022, through February 7, 2025.

192. Paint chips are continually being disposed of in an open dump as of this date.

193. Injunctive relief is warranted to require Defendants to conduct cleanup and remediation of the areas in which paint chips were disposed in an open dump.

194. Sections 9-339 and § 9-342 of the Environment Article vest this Court with the authority to issue an injunction and to assess civil penalties of up to \$10,000 per day, jointly and severally, for any of the violations alleged in this Count.

COUNT VIII
(TTI and Skyline - Handling Solid Waste
in a Manner Creating a Nuisance)

195. The Department realleges and incorporates by reference the allegations in all prior paragraphs of this Second Amended Complaint.

196. COMAR 26.04.07.03A prohibits a person from engaging in solid waste handling in a manner which will likely create a nuisance, impair the quality of the environment, or create other hazards to the public health, safety, or comfort.

197. By causing the removal and discarding of solid waste in the form of lead-based paint chips from the Tower without containment, Defendants, individually or through the actions of their agents, engaged in solid waste handling in a manner that likely created a nuisance, impaired the quality of the environment, and created hazards to public health, safety, or comfort on at least the following 11 days:

June 5, 2022;
June 6, 2022, through June 7, 2022;
June 9, 2022, through June 10, 2022;
June 13, 2022, through June 15, 2022;
June 17, 2022; and
June 19, 2022, through June 20, 2022.

198. Between August 10, 2023, and July 23, 2024, TTI, either directly or through the actions of its agents, engaged in solid waste handling in a manner that likely created a nuisance, impaired the quality of the environment, and created hazards to public health, safety, or comfort.

199. The prior and ongoing release of unstabilized lead-based paint from the

Tower as a result of the improper solid waste handling has resulted in a nuisance, impaired quality of the environment, and hazards to public health, safety, or comfort that continue as of this date.

200. Injunctive relief is warranted to require Defendants to stop the ongoing release of solid waste in a way that presents a nuisance and threat to public health, safety, and comfort, and to remediate the resulting harm.

201. Sections 9-339 and 9-342 of the Environment Article vest this Court with the authority to issue an injunction and to assess civil penalties of up to \$10,000 per day, jointly and severally, for any of the violations alleged in this Count.

COUNT IX
(TTI and Skyline - Failure to Make a Hazardous Waste Determination)

202. The Department realleges and incorporates by reference the allegations in all prior paragraphs of this Second Amended Complaint.

203. COMAR 26.13.03.02A requires that a person who generates solid waste shall, at the point of waste generation, make an accurate determination as to whether that waste is a hazardous waste.

204. COMAR 26.13.03.01A-2 sets forth criteria by which a person is subject to COMAR 26.13.03.

205. Pursuant to COMAR 26.13.03.01A-3, a person not meeting criteria under COMAR 26.13.03.01A-2 is small quantity generator and subject to COMAR 26.13.02.05.

206. Pursuant to COMAR 26.13.03.01A-3, while small quantity generators are subject to COMAR 26.13.02.05 rather than COMAR 26.13.03, they are still subject to certain provisions of COMAR 26.13.03 as specified in COMAR 26.13.02.05.

207. Pursuant to COMAR 26.13.02.05D(1), in order for exemption from regulation under the chapter, the generator must comply with COMAR 26.13.03.02 - .02-2, which concern hazardous waste determination.

208. Defendants generated solid waste that was not subject to exemption under COMAR 26.13.03 or COMAR 26.13.02.05, and were therefore subject to COMAR 26.13.03.02 - .02-2.

209. Under COMAR 26.13.03.02-1D(5), if subsequent testing shows the waste to exhibit a characteristic of hazardous waste, a person is subject to any liability that applies as a result of the person's mischaracterization of the waste. and the person has failed to satisfy the requirement of COMAR 26.13.03.02A(1)(a) to make an accurate determination as to whether the waste is a hazardous waste.

210. Testing completed on paint from the Tower collected on August 17, 2022, showed that three of five samples met the definition of hazardous waste by exhibiting the toxicity characteristic for lead.

211. Further testing using the TCLP method on paint chips collected from the ground from August 2022 to October 2023 showed that paint chips had met the definition of hazardous waste by exhibiting the toxicity characteristic for lead.

212. From May 28, 2022, through August 17, 2022, Defendants failed to make any hazardous waste determination for solid waste in the form of discarded paint chips at the point of generation, and/or failed to make an accurate hazardous waste determination, in violation of COMAR 26.13.03.02A.

213. Section 7-266(a) of the Environment Article vests this Court with the authority to issue a civil penalty of up to \$25,000 for any of the violations alleged in this Count.

COUNT X
(TTI and Skyline - Cost Recovery)

214. The Department realleges and incorporates by reference the allegations in all prior paragraphs of this Second Amended Complaint.

215. Lead and lead acetate are hazardous substances as defined under § 7-201(l) of the Environment Article.

216. Starting on February 1, 2023, and continuing, Department personnel began conducting soil sampling and testing activities at the Tower site, public areas, and various residences surrounding the Tower in order to identify and assess potential risks to the soil in response to a release or threatened release of a hazardous substance from the Tower.

217. Under § 7-220(b) of the Environment Article, the Department may recover all costs associated with its response to the release or threatened release of a hazardous substance including (1) costs of removal, restoration, or remedial action, including the restoration of natural resources where feasible, and site maintenance and monitoring in

response to a release or threatened release of any hazardous substance; (2) all costs incurred by the Department in monitoring and assessing the effect on public health and natural resources of any site at which a hazardous substance is or may be present, including the costs of any subsurface borings and any analysis of samples taken, the costs of investigations conducted for the purpose of defining remedial action, and the costs of litigation expenses incurred in obtaining reimbursement for expenditures; (3) the State share mandated under § 104(c)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); (4) all costs incurred in providing public information concerning a site that does or may contain a hazardous substance; and (5) costs resulting from releases or threatened releases of hazardous substances.

218. Under § 7-221 of the Environment Article, expenditures made by the Department from the State Hazardous Substance Control Fund in response to a release or a threatened release of a hazardous substance at a particular site shall be reimbursed to the Department for the State Hazardous Substance Control Fund by the responsible person for the release or the threatened release.

219. As the owner of the Tower site on which there was a release or threatened release of a hazardous substance, TTI is a responsible party as defined under § 201(t)(1) of the Environment Article.

220. As the operator conducting the activities on the Tower site that resulted in the release or threatened release of a hazardous substance, Skyline is also a responsible party as defined under § 201(t)(1) of the Environment Article.

221. Section 7-221(b) of the Environment Article provides that, in addition to any other legal action authorized by Title 7, subtitle 2, the Attorney General may bring an action to recover costs and interest from any person who fails to make a reimbursement as required under § 7-221(a).

222. Defendants are liable to the Department, jointly and severally, for all of the past and future response costs incurred by the Department, including without limitation, investigation and remediation expenses, oversight costs and interest, and the costs of litigation expenses incurred in obtaining reimbursement.

COUNT XI

(TTI and Skyline – Discharge of Pollutants To Waters of the State)

223. The Department re-alleges and incorporates by reference the allegations of all prior paragraphs of this Second Amended Complaint.

224. Section 9-322 of the Environment Article provided that a person may not discharge any pollutant into waters of the State unless authorized by Title 4, subtitle 4, or by Title 9, subtitle 3 of the Environment Article.

225. Pursuant to Env't. § 9-101(b) and COMAR 26.08.01.01B(20), “discharge” includes the addition, introduction, leaking, spilling, or emitting of a pollutant into waters

of the State, or placing a pollutant in a location where the pollutant is likely to pollute waters of the State.

226. Skyline and TTI's discharges of lead-based paint chips from the Tower to waters of the State, or placed in a position likely to pollute waters of the State, from June 5, 2022, and continuing to the present, constitute a recurring violation of §§ 9-322 and 9-323 of the Environment Article.

227. Injunctive relief is warranted to require Defendants to conduct cleanup and remediation of the areas in which paint chips were discharged to waters of the State.

228. Sections 9-339 and § 9-342 of the Environment Article vest this Court with the authority to issue an injunction and to assess civil penalties of up to \$10,000 per day, jointly and severally, for any of the violations alleged in this Count.

COUNT XII
**(TTI and Skyline – Disposal or Discharge of
Controlled Hazardous Substance to the Environment)**

229. The Department re-alleges and incorporates by reference the allegations of all prior paragraphs of this Second Amended Complaint.

230. Section 7-224 of the Environment Article prohibits a person from storing, discharging, treating, or disposing of a controlled hazardous substance in this State except in a controlled hazardous substance facility, or in accordance with the Subtitle.

231. Skyline and TTI, either directly or through the actions of their agents, disposed of and/or discharged a controlled hazardous substance in the form of lead-based

paint chips from the Tower, in violation of § 7-224 of the Environment Article, on at least the following 11 days:

June 5, 2022;
June 6, 2022, through June 7, 2022;
June 9, 2022, through June 10, 2022;
June 13, 2022, through June 15, 2022;
June 17, 2022; and
June 19, 2022, through June 20, 2022.

232. TTI, either directly or through the actions of its agents, additionally disposed of and/or discharged a controlled hazardous substance in the form of lead-based paint chips from the Tower, in violation of § 7-224 of the Environment Article, on at least the following days:

August 17, 2022
September 2, 2022
November 9, 2022
December 20, 2022
February 1, 2023
February 2, 2023
February 6, 2023
February 8, 2023
February 23, 2023
February 24, 2023
May 2, 2023
July 21, 2023
June 12, 2024
June 27, 2024
July 20-July 23, 2024.

233. TTI also, either directly or through the actions of its agents, disposed of and/or discharged a controlled hazardous substance in the form of lead-based paint chips from the Tower, in violation of § 7-224 of the Environment Article, on an additional 249

days from July 8, 2022, through February 7, 2025.

234. Section 7-266(a) of the Environment Article vests this Court with the authority to issue a civil penalty of up to \$25,000 for any of the violations alleged in this Count.

REQUEST FOR RELIEF

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

A. Enter an injunction, pursuant to Environment Article §§ 7-263, 9-268, and 9-339, and common law principles, directing Defendants to hire Department-accredited contractors authorized to conduct lead abatement on structural steel, and immediately stabilize all deteriorated paint on the Tower in order to prevent the further disposal and loss of paint chips within thirty (30) days, in accordance with a plan submitted within five days to the Department for approval;

B. Enter an injunction, pursuant to Environment Article §§ 7-263, 9-268, and 9-339, and common law principles, directing Defendants to, prior to any disturbance or stabilization of lead paint on the Tower, install a containment system that will appropriately contain any lead paint chips and dust from release and follow applicable regulations set forth in COMAR 26.02.07, 26.16.01.13C, 26.11.06.03, and 26.13.03;

C. Enter an injunction, pursuant to Environment Article §§ 7-263, 9-268, and 9-339, and common law principles, directing Defendants, when conducting work disturbing

paint on the Tower, to arrange for daily monitoring of work to ensure that lead paint or debris has not left the work site, and immediately remedy any incidental releases;

D. Enter an injunction, pursuant to Environment Article §§ 7-263, 9-268, and 9-339, and common law principles, directing Defendants to implement mass outreach to all residences within a one-half mile radius of the Tower, informing residents of the hazards of lead paint, as well as providing a local hotline number for the reporting of chips and obtaining information about options for remediation or inspection;

E. Enter an injunction, pursuant to Environment Article §§ 7-263, 9-268, and 9-339, and common law principles, directing Defendants to submit a plan within five days for Department approval specifying a systematic and trackable method of paint chip removal and perform inspection and remove all visible paint chips from all areas, including waters of the State, and residences within a one-half mile radius of the Tower within thirty (30) days;

F. Enter an injunction, pursuant to Environment Article §§ 7-263, 9-268, and 9-339, and common law principles, directing Defendants to revisit and clean any areas in which new paint chips from the Tower have been reported, including waters of the State. until such time that the Tower has been stabilized;

G. Enter an injunction, pursuant to Environment Article §§ 7-263, 9-268, and 9-339, and common law principles, directing Defendants, if necessary, to arrange for interior inspections and cleaning of residences in which visible paint chips from the Tower were

present, and arrange for any additional testing and/or remediation deemed necessary as a result of the current soil sampling efforts (including closure and validation testing);

H. Assess civil penalties against TTI of up to \$25,000 per day of violation, pursuant to §§ 6-1005 and 6-422 of the Environment Article, as set forth in Count I;

I. Assess civil penalties against TTI of up to \$10,000 per day, per violation, pursuant to § 9-342 of the Environment Article, as set forth in Count II;

J. Assess civil penalties against Skyline of up to \$25,000 per day of violation, pursuant to §§ 6-1005 and 6-422 of the Environment Article, as set forth in Counts III through VI;

K. Assess civil penalties against Defendants, jointly and severally, of up to \$10,000 per day, per violation, pursuant to § 9-342 of the Environment Article, as set forth in Counts VII and VIII;

L. Assess civil penalties against Defendants, jointly and severally, of up to \$25,000 per violation, pursuant to § 7-266(a) of the Environment Article, as set forth in Counts IX and XII;

M. Assess civil penalties against Defendants, jointly and severally, of up to \$10,000 per day, per violation, pursuant to § 9-342 of the Environment Article, as set forth in Count XI;

N. Enter a judgment, pursuant to Environment Article §§ 7-220 and 7-221, requiring Defendants reimburse the Department for all costs incurred from the State

Hazardous Substance Control Fund in response to a release or a threatened release of a hazardous substance from the Tower, including the collection, sampling, canvassing, and testing costs associated with soil sampling of the Tower grounds and surrounding communities; and

O. Grant such other relief as this Court deems just and equitable.

Respectfully submitted,

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