

CSX TRANSPORTATION, INC.

500 Water Street,  
Jacksonville, Florida 32202

Plaintiff

v.

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

Defendant.

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE CITY

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\*  
\* Case No. \_\_\_\_\_  
\*  
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CIVIL DIVISION

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RECEIVED  
CIRCUIT COURT FOR  
BALTIMORE CITY

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**MOTION FOR TEMPORARY RESTRAINING ORDER**

Plaintiff CSX Transportation, Inc. (“CSXT”), by and through its undersigned counsel, pursuant to Maryland Rules 15-501 through 15-505, hereby moves for an *ex parte* temporary restraining order to prevent Defendant Maryland Department of the Environment (“MDE”) from disclosing certain confidential information of CSXT and for grounds states:

1. CSXT incorporates the “Facts” section set forth in the Complaint filed contemporaneously with this motion in its entirety as if fully set forth herein.<sup>1</sup>

2. Temporary Restraining Orders (“TRO”) are governed by Maryland Rule 15-504 (a), which states in relevant part:

**Standard for granting.** A temporary restraining order may be granted only if it clearly appears from specific facts shown by affidavit or other statement under oath that immediate, substantial, and irreparable harm will result to the person seeking the order before a full adversary hearing can be held on the proprietary of a preliminary or final injunction.

<sup>1</sup> For ease of reference and the Court’s convenience, all defined terms in this Motion will have the same meaning as in the Complaint.

3. In determining whether the standard for granting a TRO has been met, Maryland courts consider the following four factors:

- 1.) the likelihood that the plaintiff will succeed on the merits;
- 2.) the ‘balance of convenience’ determined by whether greater injury would be done to the defendant by granting the injunction than would result from its refusal;
- 3.) whether plaintiff will suffer irreparable injury unless the injunction is granted; and
- 4.) the public interest.

*Teferi v. Dupont Plaza Associates*, 77 Md. App. 566, 578 (1989) (citing *Department of Transportation v. Armacost*, 299 Md. 392, 404–05 (1984); *State Dep’t v. Baltimore County*, 281 Md. 548, 554 (1977)).

4. Here, pursuant to Md. Rule 15-504(a) and the *Teferi* factors, CSXT is entitled to the grant of a TRO.

5. First, the likelihood of success on the merits factor militates in favor of CSXT because MDE incorrectly determined that the Confidential Information was not subject to any exemptions from disclosure under the Maryland Public Information Act, Md. Code Ann., State Gov’t § 10-611 *et seq.* (“PIA”). In fact, the Confidential Information contains both “confidential commercial information” which is protected against disclosure by federal law, and information with security sensitivity – and thus falls under multiple recognized exemptions under PIA.

6. Md. Code Ann., State Gov’t § 10-615(2)(ii) precludes the custodian of records from disclosing a record if “the inspection would be contrary to ... a federal statute or regulation that is issued under the statute and has the force of law.” The Confidential Information includes information about “the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to [CSXT] for transportation ... that may be used to the detriment of the

shipper or consignee or may disclose improperly, to a competitor, the business transactions of the shipper or consignee” that is recognized as confidential and may not be disclosed pursuant to federal law, more specifically, 49 U.S.C. § 11904(b).

7. Md. Code Ann., State Gov’t § 10-617(d)(2) (“Commercial information”) specifically provides for mandatory protection from disclosure of “confidential commercial information.” The Confidential Information includes commercially sensitive information regarding the nature of cargo, the quantities of cargo, shipping routes and frequency. *See Exhibit A*, Aff. of Paul R. Hitchcock, at ¶¶ 14-15. Knowledge of the Confidential Information will permit CSXT’s competitors to identify certain customers of CSXT and to gain knowledge of volume and utilization rates for particular customers, both of which will allow competitors insight into CSXT’s market share. *See id.* Similarly, knowledge of the Confidential Information may allow those competitors to take targeted, specific commercial actions that may significantly reduce or even eliminate CSXT market share in certain markets. CSXT’s competitors, therefore, will obtain a business advantage from this information. *See id.*

8. Further, Md. Code Ann., State Gov’t § 10-618(j)(2) (“Emergency plans”) permits MDE to deny inspection because disclosure of the Confidential Information could “endanger the life or physical safety of an individual.” *See* DOT’s Letters published on FRA’s website on May 12, 2014 at <http://www.fra.dot.gov/eLib/details/L05234> (In letters DOT Secretary Foxx sent to 48 state governors, Secretary Foxx described the crude oil information as “sensitive information with security implications.”).

9. Thus, as a matter of law, the Confidential Information is protected from disclosure.

10. Second, CSXT will suffer immediate, substantial and irreparable injury unless the injunction is granted because, as previously noted, the Confidential Information contains sensitive commercial information, which if made available to its competitors, will provide a clear business advantage over CSXT. **Exhibit A**, Aff. of Paul R. Hitchcock, at ¶ 15.

11. Third, the “balance of convenience” weighs in favor of CSXT. MDE will suffer no harm if it is prohibited from releasing the Confidential Information. Indeed, officials of state government implicitly recognized this when the non-disclosure agreement was signed. The injunctive relief sought by CSXT in no manner affects MDE or Maryland SERCs from obtaining and using the information to prepare for and manage any emergency response. Accordingly, the immediate and irreparable harm to CSXT in denying injunctive relief greatly outweighs the *de minimis*, if any, harm to MDE if the injunctive relief is granted.

12. Finally, the public interest is best served by granting the injunctive relief because the Confidential Information contains the type of sensitive information, which Md. Code Ann., State Gov’t § 10-618(j)(2) seeks to exempt from disclosure. *See* DOT’s Letters published on FRA’s website on May 12, 2014 at <http://www.fra.dot.gov/eLib/details/L05234>. Thus, protection from disclosure will avoid potential public harm, as contemplated by Maryland law.

13. In accordance with Maryland Rule 15-504(b), the undersigned counsel for CSXT has notified Ellen Cohill of the Maryland Attorney General’s Office and Amanda R. Degan of the MDE, of CSXT’s intent to file this Motion for Temporary Restraining Order and the accompanying Complaint.

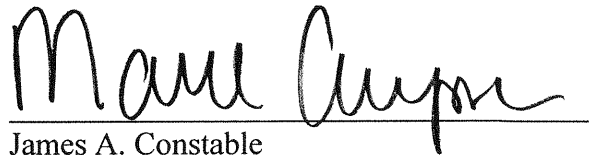
WHEREFORE, CSXT Transportation, Inc. respectfully requests that this Honorable Court issue a Temporary Restraining Order prohibiting Defendant Maryland Department of the Environment from releasing the Confidential Information pursuant to

Maryland Public Information Act requests and grant such other and further relief as this Court deems necessary and appropriate.

**REQUEST FOR HEARING**

Plaintiff hereby requests a hearing on his Motion for Temporary Restraining Order.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Marc A. Campsen", written over a horizontal line.

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Jason R. Potter  
Marc A. Campsen  
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Attorneys for Plaintiff

**OF COUNSEL**

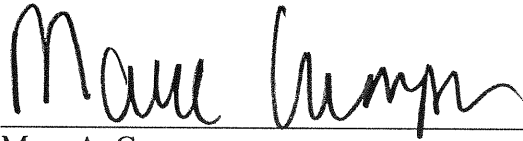
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 24<sup>th</sup> day of July 2014, a copy of the Plaintiff's Motion for Temporary Restraining Order, Request for Hearing, and Proposed Order were served via e-mail and first class mail postage pre-paid:

Office of the Attorney General  
Ellen Cohill  
1800 Washington Boulevard  
Baltimore, Maryland 21230

Amanda R. Degan  
Maryland Department of  
the Environment  
Public Information Act Coordinator  
1800 Washington Boulevard  
Baltimore, Maryland 21230

A handwritten signature in black ink, appearing to read "Marc A. Campsen", written over a horizontal line.

Marc A. Campsen

CSX TRANSPORTATION, INC.  
[ADDRESS]

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1800 Washington Boulevard  
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Defendant.

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**TEMPORARY RESTRAINING ORDER**

Upon consideration of the foregoing Motion for Temporary Restraining Order and the Complaint for Injunctive Relief, the Court having found that Plaintiff CSX Transportation, Inc. will suffer irreparable harm if the Temporary Restraining Order is not issued in that its “confidential commercial information” will be publicly available if Defendant is not enjoined from disclosing such information pursuant to Maryland Public Information Act requests, the Court having found that it is manifest that the harm to Plaintiff will be irreparable and is not susceptible to monetary compensation, it is this \_\_\_\_\_ day of \_\_\_\_\_ 2014 at \_\_\_\_\_ am/pm hereby

ORDERED that Defendant Maryland Department of the Environment and its agents, servants and employees shall not disclose any information received from CSX Transportation, Inc. pursuant to the May 7, 2014, U.S. Department of Transportation Emergency Restriction/Prohibition Order under Docket No. DOT -OST- 2014 -0067; and it is

FURTHER ORDERED that this Temporary Restraining Order, unless further extended by Court Order, will expire on \_\_\_\_\_ day of \_\_\_\_\_ 2014; and, it is

FURTHER ORDERED that a party or any person affected by this Order may apply for a modification or dissolution of this Order on two (2) days' notice, or on such shorter notice as this Court may prescribe, to the party who obtained the Order; and, it is

FURTHER ORDERED that the requirement that Plaintiff post a bond pursuant to Maryland Rule 15-503 shall be and hereby is waived.

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JUDGE





improperly, to a competitor, the business transactions of the shipper or consignee.” 49 U.S.C. § 11904(b).

6. Pursuant to, and in compliance with, 49 U.S.C. § 11904, CSXT treats customer information, including the nature, kind, quantity and routing of their property, as confidential in its operations and its business practices.

7. CSXT’s treatment of customer information as confidential is also in accord with industry practices.

8. On May 7, 2014, the U.S. Department of Transportation (“USDOT”) issued an Emergency Order requiring railroad carriers to submit information about trains carrying 1,000,000 gallons or more of Bakken crude oil to state emergency response agencies (the “Confidential Shipment Information”).

9. The USDOT issued guidance documents about the May 7, 2014 Emergency Order, directing state emergency agencies to treat the Confidential Shipment Information as confidential, and to provide such information only to those with a need to know. *See, DOT Frequently Asked Questions on DOT’s May 7, 2014 Emergency Order Regarding Notification to Communities of Bakken Crude Oil Shipments published on FRA’s website on May 23, 2014 at <http://www.fra.dot.gov/eLib/details/L05237>.*

10. In the same guidance document, the USDOT further authorized railroad carriers to require state emergency agencies to enter into confidentiality agreements prior to disclosing the Confidential Shipment Information required by the May 7, 2014 Emergency Order. *See id.*

11. In accordance with the USDOT’s guidance regarding the May 7, 2014 Emergency Order, CSXT and the state of Maryland entered into a confidentiality and non-disclosure agreement regarding the Confidential Shipment Information.

12. Thereafter, CSXT submitted the Confidential Shipment Information to the state in compliance with the May 7, 2014 Emergency Order.

13. The Confidential Shipment Information is expressly recognized by the USDOT and Maryland, as expressed in the non-disclosure agreement, as being confidential, proprietary information.

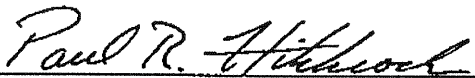
14. CSXT was assured that the Confidential Shipment Information provided to the state of Maryland would not become part of the public domain, where competitors of CSXT's customers would be able to assess the volume of crude oil that CSXT's customers are purchasing and shipping by rail.

15. In addition to being contrary to the federal confidentiality provisions of 49 U.S.C. § 11904(b), disclosure of the Confidential Shipment Information will harm CSXT by giving its commercial competitors visibility into CSXT's market position.

16. I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.

17. FURTHER AFFIANT SAYETH NAUGHT.

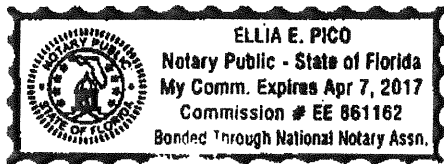
Executed this, the 24<sup>th</sup> day of July, 2014.

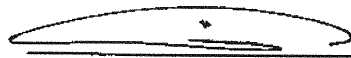
  
\_\_\_\_\_  
Paul R. Hitchcock

STATE OF Florida, COUNTY OF Duval:

On this, the 24<sup>th</sup> day of July, 2014, before me, the undersigned, personally appeared Paul Hitchcock, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



  
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Notary Public  
My Commission Expires: 4/7/2017