

COURT OF SPECIAL APPEALS OF MARYLAND

COSTCO WHOLESALE
CORPORATION,

Appellant

v.

MONTGOMERY COUNTY,
MARYLAND et al.,

Appellees.

*
*
*
*
*
*
*
*
*
*
*

APPEAL NO. 02450

September Term, 2015

* * * * *

BRIEF OF APPELLANT
COSTCO WHOLESALE CORPORATION

John E. Griffith, Jr.
john.griffith@dlapiper.com
Paul Wierenga
paul.wierenga@dlapiper.com

DLA PIPER LLP (US)
6225 Smith Avenue
Baltimore, Maryland 21209-3600
(410) 580-4166 (Telephone)
(410) 580-3166 (Facsimile)

Attorneys for Appellant
COSTCO WHOLESALE
CORPORATION

Patricia A. Harris
Michael J. Goecke
LERCH, EARLY & BREWER, CHTD.
3 Bethesda Metro Center, Suite 460
Bethesda, Maryland 20814
(301) 841-3832 (Telephone)
(301) 347-3756 (Facsimile)

Of Counsel for Appellant
COSTCO WHOLESALE
CORPORATION

TABLE OF CONTENTS

	<u>Page</u>
Statement of the Case.....	1
Questions Presented.....	3
Statement of Facts.....	4
1. The Neighborhood.....	4
2. The Station.....	5
3. Air Emissions.....	6
a. Nitrogen Dioxide.....	6
i. National Monitoring Data.....	7
ii. Air Modeling.....	8
b. Fine Particulate.....	9
4. Health Standards.....	10
Standard of Review.....	11
Argument.....	12
I. The Board’s decision to disregard the state-mandated NAAQS constitutes reversible error that is properly before this court for judicial review.....	13
A. The NAAQS are health-based standards that apply in Montgomery County.....	13

B.	Maryland’s adoption of the NAAQS Standards is preemptive and precludes the Board from denying the special exception based on fears about air quality that complies with those health-based standards.....	15
1.	The Board’s decision is preempted by conflict.....	15
2.	The Board’s decision is preempted by implication.....	17
C.	Costco consistently argued that the NAAQS governed this case and the Board lacked authority to depart from that standard.....	22
II.	The Board's finding of the potential risk of adverse health effects is arbitrary and capricious and not supported by substantial evidence.....	24
III.	The Board's finding of incompatibility is erroneous	27
Conclusion.....		34

TABLE OF AUTHORITIES

Ad+Soil, Inc. v. County Commr's of Queen Anne's County
307 Md. 307 (1986).....19

Allied Vending, Inc. v. Bowie
332 Md. 279 (1993).....17

Altadis U.S.A., Inc. v. Prince George's County
431 Md. 307 (2013).....20

Anderson v. Sawyer
23 Md.App. 612 (1974)32

Cicala v. Disability Review Bd.
288 Md. 254 (1980).....22

Cinque v. Montgomery County Planning Board
173 Md. App. 349 (2007).....12

Concerned Citizens of Great Falls, Maryland v. Constellation-Potomac, LLC
122 Md. App. 700 (1998) (“Concerned Citizens”).....22

Days Cove Reclamation Co. v. Queen Anne's County
146 Md. App. 469 (2002).....18

East Star, LLC. V. County Commissioners of Queen Anne's County
203 Md. App. 477 (2012).....15

Exxon Mobil Corporation v. Albright
433 Md. 303 (Md. 2013)25

Hikmat v. Howard County
148 Md. App. 502 (2000).....12

*Insurance Commissioner of the State of Maryland v. Equitable Life Assurance
Society of the United States*
339 Md. 596 (1995).....23

Lead Industries Ass'n v. Environmental Protection Agency
647 F.2d 1130 (D.C. Cir. 1980).....14

Mayor & City Council of Baltimore v. New Pulaski Co. Ltd. P'ship
112 Md. App. 218 (1996)19

<i>Montgomery County v. Butler</i> 417 Md. 271 (2010)	33
<i>Mossburg v. Montgomery County</i> 107 Md. App. 1 (1995)	26
<i>People's Counsel for Baltimore County v. Loyola College in Maryland</i> 406 Md. 54 (2008).....	11
<i>Perdue Farms v. Hadder</i> 109 Md. App. 582 (1996).....	16
<i>Singletary v. Maryland State Dept. of Public Safety and Correctional</i> 87 Md. App. 408 (1991)	23
<i>Soaring Vista Properties v. Board of County Commissioners of Queen Anne's County</i> 356 Md. 660	19
<i>Talbot County v. Miles Point Property, LLC</i> 415 Md. 372 (2010).....	16
<i>Talbot County v. Skipper</i> 329 Md. 481 (1993).....	15
<i>Whitman v. American Trucking Associations</i> 531 U.S. 457 (2001)	14
STATUTES	
42 U.S.C. § 7409	13
42 U.S.C. § 7409(b)(1)	13
42 U.S.C. § 7410(a).....	17
42 U.S.C. §§ 7410(a), 7416.....	14
Code § 2-103(b)(1).....	14
Code § 2-104(a)(1)	14
Maryland Code § 16.5-205(a)(3).....	20
Montgomery County Code, Chapter 3.....	18

OTHER AUTHORITIES

40 C.F.R. parts 50-98	18
40 C.F.R. Part 63	18
40 C.F.R. § 52.1070	17
36 Fed. Reg. 8186 (April 30, 1971).....	7
78 Fed. Reg. 9593-01 (Feb. 11, 2013).....	14
78 FR 9593 (Feb. 11, 2013).....	14

STATEMENT OF THE CASE

Costco Wholesale Corporation appeals from the denial of a special exception to locate a gasoline filling station at its existing membership warehouse at Westfield Wheaton Mall. Montgomery County denied the special exception, finding that car exhaust would potentially create a health risk to neighbors. (E166). The finding was reached even though air quality would comply with National Ambient Air Quality Standards (NAAQS), which are adopted by Maryland and are set at levels to protect the health of even sensitive persons with a margin of safety. The projected impacts on air quality in the neighborhood would be tiny, in addition to complying with NAAQS. Therefore, the County's decision is preempted by Maryland law and is arbitrary and capricious. Finally, the County's finding of incompatibility is not supported by substantial evidence and is contradicted by the County's specific factual and legal findings.

Costco first applied for the special exception in 2010. Thereafter, Montgomery County adopted Zoning Text Amendment 12-07 requiring a 300-foot setback between large volume gas stations and certain other land uses, including swimming pools and schools.¹ Costco changed its proposed location by several hundred feet to comply with the ordinance and renewed its application. (E4).

¹ The stated purpose of ZTA 12-07 "is to reduce the health risks and the traffic and truck nuisance caused by large gas stations to nearby property where people, particularly children, have the opportunity for active outdoor recreation." (E1673).

The Technical Staff of the Montgomery County Planning Department (“Technical Staff”) recommended denial due to air quality concerns. (E6). On February 28, 2013, the Montgomery County Planning Board voted 3-2 to recommend denial of the exception, but not based on air quality. *Id.* Instead, the Planning Board found that the proposal did not meet the "vision" of the Wheaton Central Business District and Vicinity Sector Plan, primarily because it did not promote transit-oriented development. *Id.*

Thereafter, Hearing Examiner Martin L. Grossman conducted 37 days of hearings over a period of 17 months for the Montgomery County Board of Appeals. Principal opponents of the station were Appellees Stop Costco Gas Coalition and the Kensington Heights Civic Association.

On December 12, 2014, the Hearing Examiner issued his 262-page recommended decision. (E1-262). He found that Costco demonstrated satisfaction of most of the general and specific requirements for the special exception, but recommended denial. He found that even without exceeding health-based NAAQS, the projected level of fine particulate matter (PM_{2.5}) and nitrogen dioxide (NO₂) in the ambient air “makes it too risky to allow the proposed use this close to single-family homes and the extremely vulnerable children at the Stephen Knolls School.” (E166). He also found incompatibility based on traffic and related congestion, again citing vehicle exhaust. (E247-48). The Board of Appeals adopted the decision of the Hearing Examiner without modification on April 3, 2015. (E492-95). (Hereinafter, the “Board” refers to both the Board of Appeals and the Hearing Examiner.) Costco timely filed its Petition for Review on April 30, 2015.

After argument and briefing, the Circuit Court for Montgomery County (Bair, J.) affirmed the Board on December 18, 2015. (E504-14). This appeal followed on January 15, 2016.

QUESTIONS PRESENTED

1. Did the County and Circuit Court err by departing from the NAAQS standards, which are controlling state law, in finding that there was an adverse risk to health from the proposed use?
2. Did the Circuit Court err in deciding that Costco had waived its right to argue that the NAAQS preempt the ability of the County to deny a special exception based on air quality that would comply with the NAAQS?
3. Was the Board's finding of a potential adverse risk to health from the proposed use arbitrary and capricious, particularly where air quality would comply with NAAQS and where it was not contested that the station contribution was less than one per cent of the total pollutant at the most sensitive neighborhood locations?
4. Did the Board err by finding that congestion from traffic and parking would cause incompatibility with the neighborhood, where the air would be safe, where the traffic to the proposed station is physically separated from the allegedly impacted neighborhood, and where traffic is within long-standing allowances for Wheaton Mall?

STATEMENT OF FACTS

1. The Neighborhood

Westfield Wheaton Mall is a major regional mall situated on 75 acres and with 1.5 million square feet of retail space. A Costco membership warehouse is an existing tenant at the Mall. Other tenants include Target, J.C. Penney, Macy's and Giant Food. (E17). Existing zoning allows the Mall, as of right, to add more than 300,000 additional square feet of retail space on the existing site. (E39; E1430).

The Mall is bordered by three major boulevards (University Boulevard, Veirs Mill Road, and Georgia Avenue), the Wheaton Metro station (with a large parking garage), and a Metro bus hub. There is other retail located on two sides of the Mall, including a significant commercial district. Residential development in the vicinity includes high-rise apartments, townhomes, and detached homes. (E19).

The Board's findings focused on the residential neighborhood to the south and west of the Mall (the "Residential Neighborhood"), which includes the Stephen Knolls School (the "School"), for the developmentally disabled, and the Kenmont Swim and Tennis Club (the "Pool"). The Residential Neighborhood is separated from the Mall by a ring road, trees and between ten and thirty feet of elevation. There are no vehicular entrances from the ring road or the Mall into the neighborhood. (E565). Development plans for the Mall and gas station call for installing additional barriers between the station and this area, including a wide pedestrian walk way, an enhanced forest buffer, and an eight foot vegetative, green wall. (E22-23). The photo below depicts the general neighborhood, and the location of the proposed station (marked with a *). (E19).



2. The Station

Costco proposes a state-of-the-art gasoline filling station, employing emissions control devices that far exceed state requirements. *See* (E583-84, 588-89; E611-12). Sixteen fuel dispensers on four islands would be attended by two attendants from 6:00 a.m. until 9:30 p.m. during the week and 7:00 a.m. to 7:00 p.m. on weekends. (E21). The special exception would allow Costco to sell up to 12 million gallons of gasoline per year. (E22).

Costco sells gas and merchandise only to its members. Up to 50% of the projected trips to the station would be included in trips to Costco and the Mall that would occur anyway. (E557-58). The Technical Staff found that previously approved

traffic capacity for the Mall (793 additional trip credits) already allowed for traffic far greater than the projected station traffic (only 138 new peak hour trips); and existing facilities, including roads, were found adequate for the additional traffic. (E39; E1430).

3. Air Emissions

Costco retained an expert meteorologist, David Sullivan, to determine air impacts. Mr. Sullivan examined emissions from the service station itself and from vehicles using the station or delivering fuel. He found that vapor emissions from the station itself would not create a health risk, and the Board agreed. (E162).

The dispute over air quality focused on how vehicle exhaust would impact levels of certain air pollutants. Mr. Sullivan analyzed carbon monoxide, nitrogen dioxide (NO₂), and particulate matter (PM_{2.5}). He found, and the Board agreed, that carbon monoxide was not an issue. (E161). The evidence focused on NO₂ and PM_{2.5}.

The United States Environmental Protection Agency ("EPA") establishes NAAQS for NO₂ and PM_{2.5}. 40 C.F.R. pt. 50. As discussed at pages 13-14, *infra*, federal law requires that NAAQS be set at levels that are protective of public health, with a margin of safety. 42 U.S.C. § 7409(b)(1) (App. 1). As explained below, the station will not cause air in the vicinity of the station to exceed NAAQS for either NO₂ or PM_{2.5}.

a. Nitrogen Dioxide

Nitrogen dioxide in ambient air has many sources, including burning of virtually any fuel. *See* (E2231). EPA set an annual average NAAQS for NO₂ at 100 micrograms

per cubic meter of air ("ug/m3") in 1971.² 36 Fed. Reg. 8186 (April 30, 1971). In 2010, EPA added an hourly maximum standard of 190 ug/m3. (E2230). The controversy centered on whether, under extreme conditions, short term concentrations could approach or exceed the hourly maximum.

Costco presented two types of evidence concerning potential NO₂ levels; (1) actual data from around the country, and (2) modeling predicting ambient air quality impacts. Both analyses predicted safe levels of NO₂.

i. National Monitoring Data

EPA collects ambient air quality data nationally. Not a single monitor (out of 411) has exceeded the hourly maximum for NO₂. (E2492). The highest level recorded, 156 ug/m³ (or 83.3 ppb), was from a monitor near the interstate highway to the Port of Long Beach, California, one of the busiest ports in the country. *Id.* (E2027-28). That level is 20% below the NAAQS limit. Seventeen percent of the traffic on that highway is large diesel trucks which, compared to automobiles, disproportionately emit NO₂. (E1252-53).³ Mr. Sullivan testified that the proposed station could not cause NO₂ in Wheaton to exceed levels at the Long Beach location. (E1161).

² A microgram is one-millionth of a gram. Experts in this case often referred to parts per billion, or "ppb." For NO₂, 100 ppb equals 191 ug/m³ at 20°C or 188 ug/m³ at 25°C. The experts in this case generally rounded to 190 ug/m³. *See, e.g.*, (E1171).

³ Heavy duty diesel engines (prior to introduction of the new clean diesels), generated about 15 times the level of nitrogen oxides (a precursor of NO₂) per mile than do automobile gasoline engines. (E1161-62; Ex. 15(a), 48-51).

ii. Air Modeling

EPA protocols recommend that the modeler start with overly simplified models that assume worst-case facts. (E1960-64; E799-800).⁴ If the proposed facility passes that initial modeling, the modeler submits those results to the permitting authority and no further modeling is done. *Id.* EPA recognizes that if the worst-case assumptions demonstrate no problem, more refined, accurate assumptions would demonstrate no problem. The crude worst-case, model does not, however, predict actual emissions.

Mr. Sullivan used the AERMOD model recommended by EPA. He testified that modeling using more realistic assumptions showed that emissions from the proposed station, when added to existing background levels, would not cause maximum one hour NO₂ in the ambient air to exceed 121 ug/m³ – roughly 35% below the standard of 190 ug/m³. (E1161; E2375). Because his modeling overstated concentrations, his opinion was that concentrations at times of peak operations would actually be under 100 ug/m³, or almost 50% below the NAAQS standard. (E1163).⁵

⁴ Air modeling is generally employed in evaluating very large sources of emissions (such as power plants) as part of the permitting process. *See* (E799). It is never required by EPA for a gas station. (E626-27).

⁵ In the initial modeling of maximum hourly NO₂, which used very conservative assumptions that overestimated locally generated NO₂, Mr. Sullivan made a computation error related to the background NO₂. In converting readings measured in parts per billion to ug/m³, he divided by 1.88 when he should have multiplied. (E1880). The resulting predicted maximum levels at the pool and the school were just under NAAQS levels once the corrections for the computational error were made, but without correcting for the overly conservative assumptions. Among the overly conservative assumptions were (1) treating all nitrogen oxide in vehicle exhaust as NO₂ (when it is typically only 20%), (2) using maximum peak traffic counts for all averaging times, (3) assuming that 90% of cars at Wheaton Mall park in the Costco lots and using peak traffic for all parking lot emissions, (4) double counting some sources

The gas station contribution of NO₂ to the Residential Neighborhood is small compared to other sources. For instance, the School is much closer to Georgia Avenue, which carries 50,000 cars a day (E565), than it is to the station. Analyses done by Mr. Sullivan showed that peak contribution from the station to the School and the Pool would be less than 1% of the total NO₂ at those locations, using urban dispersion coefficients. (E1490; E1881). Peak contribution at the house closest to the station was about 5%. *Id.* The trivial nature of the relative contribution of NO₂ is essentially undisputed.⁶

b. Fine Particulate

Particulate comes from many sources, including dust, smoke, cooking, agriculture and industrial processes. (E1504). Gasoline-powered vehicles (unlike older diesel trucks) produce negligible amounts of particulate. (E614, E620). A key dispute below focused on the annual average standard for PM_{2.5}, or fine particulate matter. PM_{2.5}

in modeling roadways, (5) overestimating existing diesel exhaust for warehouse delivery trucks, (6) overestimating queue length, and (7) overestimating surface roughness, which increases concentrations. (E1469-71). When making more realistic assumptions, the levels in the neighborhood were well under NAAQS limits. (E1874 and E2363).

⁶ The opponents did no modeling nor did they determine the contribution from the station to the neighborhood. Instead, they selected data from the early run of Mr. Sullivan's models, which incorporated assumptions that even the opponents recognized were unrealistic, to suggest that levels could possibly exceed 190 ug/m³. Those opinions were not stated to any degree of probability. (E1349).

refers to particles that measure less than 2.5 microns. In 2012, EPA lowered the annual average NAAQS for PM2.5 by 20%, to 12 ug/m3.⁷

The Board found that it was unlikely that the proposed station would cause violation of the NAAQS for PM2.5. (E123). Additionally, the opposition air expert, Dr. Cole, agreed that any contribution of PM2.5 from the proposed station at locations off of the service station property was "not a significant problem." (E931-32). Mr. Sullivan testified that the station contribution of PM2.5 to neighborhood was insignificant, below 0.1% of total PM2.5 at the closest home and below 0.08% at the School. (E663; E1488).

4. Health Standards

Costco's evidence of health impact consisted primarily of comparisons of projected air quality to the NAAQS. Those standards are required by law to be protective of the health of even sensitive populations. During testimony and argument, the Hearing Examiner often reiterated support for this principle:

We should not be in a position of creating our own standards to evaluate this. So we have to look at some objective source scientifically establishing this kind of standard. The logical place is the EPA standards. It is a little unfair to any applicant to have standards that are so loosey goosey that - they're not written by the EPA." (E 244).

In response, the opponents contended that these standards were outdated, even though they were established at their current levels in 2012 for PM2.5 and 2010 for NO2. *See e.g.*, (E2545-46). Their experts presented studies which were submitted to the EPA

⁷ The Hearing Examiner cited but did not apply World Health Organization Air Quality Guidelines, which is 10 ug/m3. The European Union Standard is 25 ug/m3. 2008 O.J. (L 152) 8.

Clean Air Scientific Advisory Committee ("CASAC") which advises on the NAAQS. Most of the studies had been considered by EPA in setting the NAAQS, but a few were published after the cut-off set by EPA for its rule-making. *Id.*

Dr. Jison, a neighbor who opposed the station, testified that the studies had not identified a safe level for NO₂ or PM_{2.5}. The Hearing Examiner responded as follows:

So I'm in a way, forced back to the EPA standards, because you are telling me there is no gas station that can be allowed here because every gas station is going to create some pollution, right? (E1005).

Dr. Jison agreed. *Id.*⁸ Ultimately, however, the Board applied its subjective judgment instead of the objective standard and also ignored the fact that projected increases in PM_{2.5} and NO₂ were *de minimus*.

STANDARD OF REVIEW

The standard of review of a decision of a zoning board was set forth in *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 66-67 (2008):

In our review, we inquire whether the zoning body's determination was supported by such evidence as a reasonable mind might accept as adequate to support a conclusion.... As we have frequently indicated, the order of an administrative agency, such as a county zoning board, must be upheld on review if it is not premised upon an error of law and if the agency's conclusions reasonably may be based upon the facts proven, (internal citations and quotations omitted).

⁸ The opposition recognized that air quality would comply with the NAAQS standards. Karen Cordry, the President of the Kensington Heights Civic Association conceded: "[a]nd if . . . we cannot say anything is adverse unless the EPA has already ruled it's adverse, then we might as well go home." (E1051).

This court owes zoning boards “no deference” with respect to conclusions of law. *Cinque v. Montgomery County Planning Board*, 173 Md. App. 349, 360 (2007).

The review of factual determinations is sometimes characterized as whether those determinations are supported by substantial evidence. *Hikmat v. Howard County*, 148 Md. App. 502, 521 (2000). In this appeal, the legal issues predominate, and the Board’s errors of law are manifest.

ARGUMENT

The NAAQS have the force of law in Montgomery County and the Board was not free to substitute its own judgment on the issue of air quality. The Board’s decision is erroneous because it is preempted by state law.

The Board’s decision is arbitrary and capricious for two related reasons. First, in the face of legally mandated and health-based standards for PM_{2.5} and NO₂, the Board found risk to health based on no standards at all. Second, it relied on very slight projected increases of PM_{2.5} and NO₂ in the Residential Neighborhood that are minuscule compared to already existing levels.

Finally, the finding of incompatibility was erroneous, because it relied upon the same erroneous finding of adverse health impacts, because it ignored traffic standards, and because it is not supported by substantial evidence.

Costco recognizes the importance of local police powers in controlling land use. Indeed, it is often the beneficiary of the exercise of those powers. Every land use involves a characteristic that is objectionable in some degree to at least one party. But local police powers cannot be exercised purely on the basis of an increase in some

characteristic, no matter how small, that offends someone’s purely subjective notion of public good. Otherwise, the zoning process becomes unpredictable, inefficient and unfair. The decisions below, whether they are addressing air emissions, traffic, or parking congestion, elevate subjective notions above objective standards, and must be reversed.

I. The Board’s decision to disregard the state-mandated NAAQS constitutes reversible error that is properly before this court for judicial review.

The Board’s decision to disregard NAAQS was error, both because the state standards are preemptive and also because the decision was arbitrary and capricious. The NAAQS are health-based standards that bear directly on the grounds for denial of the special exception.

A. The NAAQS are health-based standards that apply in Montgomery County.

Under the federal Clean Air Act (“CAA”) and the Maryland Environment Article, the federal EPA and the Maryland Department of the Environment (“MDE”) regulate ambient air quality in coordination with each other. Central to this regulatory regime is the setting and enforcement of health-based ambient air quality standards.

EPA is required to set NAAQS for the major pollutants that have large numbers of sources, including PM2.5 and NO2. 42 U.S.C. § 7409. The CAA requires that NAAQS be set at levels to protect public health, “allowing an adequate margin of safety.” 42 U.S.C. § 7409(b)(1). NAAQS must protect “especially sensitive persons such as

asthmatics and emphysematics.” *Lead Industries Ass'n v. Environmental Protection Agency*, 647 F.2d 1130, 1152-54 (D.C. Cir. 1980) (citing Senate Report on the bill). Moreover, EPA is not permitted to take into account costs of implementation or technical and economic feasibility in setting the standards. *Whitman v. American Trucking Associations*, 531 U.S. 457, 471 (2001). Thus, primary NAAQS, such as those at issue in this case, are purely health-based.

The CAA requires states to comply with NAAQS. 42 U.S.C. §§ 7410(a), 7416. Maryland adopts and applies the federal standards as state law. 78 Fed. Reg. 9593-01 (Feb. 11, 2013).⁹ (App. 36-38.) MDE does so pursuant to Title 2 of the Maryland Environment Article, which confers upon MDE “jurisdiction over emissions into the air and ambient air quality in this State.” Md. Env. Code § 2-103(b)(1). MDE, like EPA, is required to protect health.

It is the policy of this State to maintain the degree of purity of the air necessary to protect the health, the general welfare, and the property of the people of this State. Md. Env. Code § 2-102.

Maryland allows counties to adopt more stringent standards, but only legislatively and subject to express limitations. Md. Env. Code § 2-104(a)(1) provides: “Except as provided in this section, this title does not limit the power of a political subdivision to adopt *ordinances, rules, or regulations* that set emission standards or ambient air quality standards (emphasis added).” Noticeably absent from the stated exceptions is one for *ad*

⁹ Until 2012, MDE restated the NAAQS in COMAR 26.11.04. Since EPA periodically revises those standards, the MDE submitted a SIP revision in 2012 wherein it updated its adoption of new or amended NAAQS and also prospectively adopted future changes in the NAAQS. 78 Fed. Reg. 9650 (Feb. 11, 2013).

hoc zoning adjudications; that omission must be given meaning. *Coleman v. State*, 281 Md. 546 (1977) (“It is elementary that . . . a court may not as a general rule surmise a legislative intention contrary to the plain language of a statute or insert exceptions not made by the legislature.”) (internal citations omitted).

Montgomery County has not adopted an alternative air quality standard for NO₂ or PM_{2.5} by ordinance, rule, or regulation. Thus, in assessing NO₂ and PM_{2.5} from this use, the NAAQS set the standard. Indeed, the most salient example of legislative action at the County level, the imposition of additional set-back requirements for higher volume gas stations, necessarily recognized that under certain circumstances such uses are perfectly lawful.

B. Maryland's adoption of the NAAQS Standards is preemptive and precludes the Board from denying the special exception based on fears about air quality that complies with those health-based standards.

Preemption of local law by state law can be express or implied or can occur when local law conflicts with State law. *Talbot County v. Skipper*, 329 Md. 481, 487-88 (1993); *East Star, LLC. V. County Commissioners of Queen Anne's County*, 203 Md. App. 477, 484-85 (2012). The Board's decision here regarding air quality standards is preempted by state law by conflict with state law and by implication.

1. The Board's decision is preempted by conflict

The Board's rejection of NAAQS standards is preempted by conflict, because it prohibits an activity which state law permits. *See, East Star*, 203 Md. App. at 493. Montgomery County has not acted legislatively to adopt a standard more stringent than

the NAAQS, thereby accepting NAAQS as its proper standards. Therefore, state law permits levels of PM_{2.5} and NO₂ not permitted by the Board.

The Board's rejection of NAAQS standards, by contrast to legislative action, is *ad hoc*. As such, it is lacking in the fair and uniform application that legislative action affords. See *Talbot County v. Miles Point Property, LLC*, 415 Md. 372, 387-88 (2010). The Board's actions prohibit an activity that state law permits and accordingly run afoul of the preemption by conflict doctrine. See *East Star*, 203 Md. App. at 493-94 (finding that the ordinance at issue "is in direct conflict with key provisions of the Env. Article, as it places additional and incompatible restrictions on the surface mining operations than those imposed by State law").

In *Perdue Farms v. Hadder*, 109 Md. App. 582 (1996), Perdue Farms sought a county special use permit to spray waste water on nearby farms. MDE granted Perdue Farms a wastewater discharge permit which limited nitrogen in groundwater beneath the farm to 10 milligrams per liter (mg/l). The Worcester County Zoning Board granted the special use permit, but imposed an additional nitrogen limitation of 20 mg/l at the nozzle. This Court ruled that the zoning board condition was preempted because it conflicted with state law governing nitrogen limitations: "the Board's conditions would prohibit spraying in situations in which the state wants to encourage it." *Id.* at 590-91. That conflict was impermissible even though indirect, because the Board limit was imposed at a different location than the State's; here the conflict could not be more direct, as the County seeks to impose a limit well below the State standard that is right on point.

2. The Board's decision is preempted by implication

Title 2 of the Maryland Environment Article, titled "Ambient Air Quality Control," preempts the Board's decision by implication. The comprehensiveness of this scheme speaks broadly in favor of preemption. *Allied Vending, Inc. v. Bowie*, 332 Md. 279, 299 (1993).

Maryland comprehensively regulates ambient air quality and sources of air pollution. MDE adopted the NAAQS as part of this comprehensive regulatory program. Title 2 gives MDE the authority and responsibility to obtain compliance with the standards. Thus, Title 2 requires MDE to adopt and enforce regulations (§§ 2-301 *et seq.*), to permit sources of emissions (§§ 2-401 *et seq.*), to regulate mobile sources (§§ 2-1101 *et seq.*), to address greenhouse gases and climate change (§§ 2-1201 *et seq.*) and otherwise to regulate air quality.

Maryland is required to adopt and to submit to EPA a State Implementation Plan ("SIP"), that "provides for implementation, maintenance, and enforcement" of NAAQS. 42 U.S.C. § 7410(a). The comprehensive nature of ambient air regulation is demonstrated by Maryland's SIP, codified at 40 C.F.R. § 52.1070. (App. 15-35). The SIP cites to the hundreds of regulations, statutes, permits and plans that regulate air quality, and it is frequently updated. The COMAR provisions relating to air pollution and air quality occupy roughly 500 pages. *See* COMAR 26.11. They in turn reference the Code of Federal Regulations and frequently adopt those regulations by reference.

Sixteen CFR volumes pertain to air pollution and air quality regulation, and together they contain approximately 14,000 pages. 40 C.F.R. parts 50-98.

As part of this program, MDE regulates emissions both from service stations and from motor vehicles. Emissions from stations are regulated pursuant to requirements for vapor control that are prescribed under National Emissions Standards for Hazardous Air Pollutants. 40 C.F.R. Part 63. MDE implements those standards through COMAR 26.11.13 and COMAR 26.11.24 and requires a permit to construct new stations. Motor vehicle emissions are regulated under federal mobile source requirements adopted pursuant to the SIP and implemented, in part, through the motor vehicle emission inspection program jointly administered with the Motor Vehicle Administration. COMAR 26.11.22 and COMAR 11.14.08. Neither is an area in which Montgomery County has regulated.¹⁰ Maryland's comprehensive control over air regulation thus preempts by implication the actions of the Board.

Maryland courts have consistently applied state preemption to reverse local zoning actions that attempt to regulate emissions or discharges associated with otherwise permitted land uses. *See e.g., Days Cove Reclamation Co. v. Queen Anne's County*, 146 Md. App. 469 (2002) (holding preemption precluded denial of a conditional use permit for a landfill based on insufficient protection of local water supplies); *Talbot County v. Skipper* (holding that Env. Article §§ 9-230 *et seq.* preempted county requirements relating to sewage sludge); *East Star* (finding state preemption of a county zoning

¹⁰ The Montgomery County Code contains 13 pages relating to air. Those provisions relate primarily to smoke, dust, odors and indoor air. They do not relate to any issue in this case. Montgomery County Code, Chapter 3. (App 39-51).

ordinance relating to sand and gravel excavation that restricted maximum disturbance area, limited the length of time of surface mining operations, and required that the previously disturbed areas be reclaimed before any expansion of mining acreage).

The Circuit Court believed that Title 2 “is not as comprehensive as [the laws] analyzed in the cases cited by Petitioner.” (E510). In fact, MDE's air regulatory program is much more comprehensive than the programs for landfills, mining and sewage sludge that were held to be preemptive. This is illustrated by comparing the Maryland SIP with any of the statutes and regulations at issue in the cited cases, and particularly those addressed in *Ad+Soil, Inc. v. County Commr's of Queen Anne's County*, 307 Md. 307 (1986).¹¹

The Circuit Court's reliance on *Ad+Soil* misapprehends the comprehensive nature of air regulation by MDE. In *Ad+Soil*, the Court of Appeals described state regulation of sludge application as “fostering local control under state supervision.” *Id.* at 326. (Note that *Skipper*, which found preemption, involved a later version of that statute.) Ambient air quality regulation in Maryland is different. Instead, air regulation is a “top down” regime which allows for a small amount of restricted local variability if done strictly in

¹¹ Pre-emption has also been applied to local ordinances under State regimes (unlike air quality) that allow for them. *Soaring Vista Properties v. Board of County Commissioners of Queen Anne's County*, 356 Md. 660, 662, 664-65 (holding sewage sludge zoning ordinance to be preempted, noting comprehensiveness of state statutory scheme); *Mayor & City Council of Baltimore v. New Pulaski Co. Ltd. P'ship*, 112 Md. App. 218, 229-31 (1996) (holding an incinerator moratorium ordinance was impliedly preempted under comprehensive waste management provisions of the Environment Article).

accord with the state and federal regime. Importantly, the permitting and emissions controls are still regulated by MDE, even if Montgomery County had enacted a local air quality standard. Therefore, *Ad+Soil* provides no basis for defeating preemption.

The Circuit Court also erred by finding that Sections 2-104 and 2-302 of the Environment Article defeat preemption. (E510). Section 2-302(c)(1) of the Environmental Article provides that “unless a political subdivision requests a more restrictive standard under § 2-104, the Department shall set ambient air quality standards for pollutants that are identical to [NAAQS].” Contrary to the ruling below, the Court of Appeals has explained that where, as here, a comprehensive state statute carves out exceptions for local authority, that decision by the General Assembly illustrates its intent to preempt that field except as to the carved out authority. *See Skipper*, 329 Md. at 492 (“In addition to the comprehensiveness of the state statutory provisions, there are other indications that the General Assembly generally intended to preempt the field of regulating sewage sludge utilization. In those circumstances where the General Assembly intended that local governments may act with regard to sewage sludge utilization, it expressly said so.”); *Altadis U.S.A., Inc. v. Prince George’s County*, 431 Md. 307, 317 (2013) (finding it “particularly significant” for purposes of preemption by implication that Maryland Code § 16.5-205(a)(3) of the Business Regulation Article set forth the only authority for local regulation of “other tobacco products”); *see also East Star*, 203 Md. App. at 492 (“In *Days Cove* and *Skipper*, the Court[s] discussed statutes that similarly addressed local authority to legislate in areas of zoning and land use, but

nonetheless found preemption because the State law was, as it is here, extensive, specific, and all-encompassing.”) (internal citations omitted).

As in *Skipper* and *Altadis*, Sections 2-104 and 2-302 illustrate the General Assembly’s intent to occupy the field of ambient air quality regulation, unless a political subdivision adopts a more restrictive standard by “ordinance, rule, or regulation” in accordance with § 2-104. The General Assembly wisely incorporated proper local legislative enactment (unlike the *ad hoc* decision here) into the state regulatory regime to ensure that a specific standard shall be factored into air permitting and other regulatory processes – including zoning and land use decisions.

If more evidence of pre-emption were needed, all the *Allied Vending* secondary factors set forth at 339 Md. at 299-300, apply here, in particular that the state's ambient health-based air quality standards preexisted the Board's decision to reject the NAAQS standards; state laws provide for pervasive administrative regulation; the local law regulates in an area in which control has not traditionally been allowed absent express legislative action; and a two-tiered regulatory process, such as occurred here, would engender chaos and confusion. Thus, the Board's decision to set aside health-based NAAQS and instead independently determine what levels of air emissions were acceptable improperly invaded MDE's jurisdiction and area of expertise and was preempted as a matter of law.

C. Costco consistently argued that the NAAQS governed this case and the Board lacked authority to depart from that standard.

Throughout the case, Costco argued that the Board must apply the NAAQS and that the NAAQS had the force of law. In closing argument before the Hearing Examiner, counsel for Costco argued that the County's acceptance of the NAAQS precluded the Board from departing from those standards:

These are the standards that must be applied. And why is that? Well, Maryland has the opportunity to apply different standards, higher standards if it so chooses. It has not done so. It has affirmatively decided to apply the EPA standards. Similarly, Montgomery County has not imposed any higher standard or any higher threshold than it would impose on the gas station. So, in the absence of any viable alternative standard, you have to measure the emissions by the [objective] standard.¹² To apply subjective, a discretionary standard, would be arbitrary and would not be supported by the record.

...

If we comply with the [NAAQS] standards, then we have met our burden that there are not adverse health effects. And, these are standards that are applied routinely by the federal courts. They've not been overturned. They have force of law. Nothing else that's been discussed in this case has force of law. (E1366-67).

The Circuit Court found dispositive that counsel did not say "preemption." (E509.) The law here is not so literal. Waiver only occurs when, despite having an opportunity to do so, a party fails to raise an issue "*in any way or at any time* during the course of the administrative proceedings." *Concerned Citizens of Great Falls, Maryland v. Constellation-Potomac, LLC*, 122 Md. App. 700, 749 (1998) ("*Concerned Citizens*"), citing statement of general rule in *Cicala v. Disability Review Bd.*, 288 Md. 254, 262

¹² The transcript says "subjective" standard but it is clear from the context that Costco counsel was arguing that the NAAQS is an "objective" standard.

(1980). In *Concerned Citizens*, the Court of Special Appeals found that an issue of the Montgomery County Board of Appeals' failure to comply with Board Rule of Procedure 7.2.6(b) was preserved even though the opinion shows that the Appellant's objection never mentioned the rule.

Moreover, the Hearing Examiner repeatedly recognized that whether he was required to apply the NAAQS was a threshold issue, and while he was not always consistent, he generally stated that he believed he was required to do so. In addition to comments cited previously, he stated:

- I fear that you are asking me to create a scenario that is impossible for any of the parties that are regulated to ever meet. So that's, that's the problem with - there has to be some level of predictability in a standard that's set up, and you're asking me to evaluate all the science and create my own standard that the EPA hasn't even been able to come up with yet....That would not be an appropriate function for me. (E1051).
- I think you want me to – I think that part of the thrust of what you said is to ask me to create a standard that the experts who, generally speaking, govern these standards haven't yet come up with, and I'm unwilling to march into that territory because I think it is not within my jurisdiction, nor is it wise to do it. (E1051).

See Singletary v. Maryland State Dept. of Public Safety and Correctional, 87 Md. App. 408 (1991) (preservation found based on the Hearing Officer raising the issue).

In any event, this Court is authorized to review *all* of the Board's legal conclusions. *Insurance Commissioner of the State of Maryland v. Equitable Life Assurance Society of the United States*, 339 Md. 596, 625-35 (1995). Here, by rejecting the NAAQS, the Board failed to apply the correct principles of law governing this case and invaded the province of MDE. This Court is authorized to review and remedy the Board's erroneous decision.

II. The Board's finding of the potential risk of adverse health effects is arbitrary and capricious and not supported by substantial evidence

The Board's decision to deny the special exception due to adverse health effects is arbitrary and capricious. First, the undisputed evidence showed that the station's contribution of NO₂ and PM_{2.5} is *de minimis*. Second, air quality will comply with NAAQS. Third, the Board was required to apply a standard – specifically the NAAQS – but it applied none. Where there exist legally mandated, objective standards, it was error for the Board to ignore them. Finally, the Board's decision was not based on substantial evidence.

The contribution of PM_{2.5} and NO₂ from cars using the proposed station will be very small relative to existing levels in the neighborhood, generally less than 1% of existing levels. This is true at the School upon which the Circuit Court and the Board focused their finding of undue risk. (E1488-90; E1881). Even at the house closest to the station, additional PM_{2.5} would be less than 1% of existing levels and “maximum” NO₂ would be about 5% of existing levels. *Id.* The Opposition's expert agreed the PM_{2.5} in the Residential Neighborhood was not a significant problem and he did not rebut Costco's proportionality analysis for NO₂ in the Residential Neighborhood. (E931-32; E874). Therefore, denial of the special exception based on these emissions is equivalent to saying that any increase in emissions is grounds for denial.

Of course, PM_{2.5} and NO₂ would be generated by any new development that increases traffic whether at the Mall or elsewhere in Wheaton. The Mall is allowed to add 300,000 square feet of retail as of right. (E39; E1430). Projected traffic counts for

the proposed station are well within those allowed for the Mall and are dwarfed by traffic on the major roads that surround the Mall and the residential neighborhood. (E565; E1430).

As the Hearing Examiner himself recognized in the context of traffic and emissions, it is not enough to say any increase is too much:

Every additional car on the road can be viewed as adding to the public danger; yet we do not bar additional cars as long as the addition falls within the established standards. (E184).

Similarly, "I'm ... forced to the EPA standards, because... every gas station is going to create some pollution.... (E1005). The Board should have followed this principle.

A finding that risk is merely "increased" does not support the conclusion that the risk is unacceptable. In *Exxon Mobil Corporation v. Albright*, 433 Md. 303 (Md. 2013), damages were awarded relating to a leak of gasoline into wells, including for medical monitoring and for emotional distress based on fear of cancer. The plaintiffs' experts in *Albright* maintained that there was "no safe level" of the gasoline contaminants and that plaintiffs were at risk of injury below the state standards. 433 Md. at 364 n. 61. The Court of Appeals reversed all such awards for plaintiffs who could not prove well water contamination in excess of state drinking water standards.

The EPA and MDE establish routinely action levels, above which exposure to contaminants is deemed generally to be unsafe for human health. As admitted at trial, the relevant drinking water standards are 5 parts per billion for benzene, and 20 parts per billion for MTBE. We therefore determine that in order to have an objectively reasonable fear of

developing cancer as a result of water contamination, measurable contamination must meet or exceed the relevant environmental action levels, if applicable, for the allegedly carcinogenic or mutagenic contaminant. 433 Md. at 365-66.¹³

The Board here found the station would be “too risky” without exceeding any recognized standard. It had no power to disregard the NAAQS, and no other standard was determined to have been applicable and unsatisfied. But even in the absence of this comprehensive and controlling state standard, the Board is not permitted to act based on subjective impressions that some aspects of a use are undesirable, especially when those aspects are inherent in activity that has been permitted by the County in its legislative capacity. The Board’s decision, as to air quality effects, was arbitrary and capricious because the “decision[] was made... according to individual preference rather than motivated by a relevant or applicable set of norms,” i.e. the established standards. *See Harvey v. Marshall*, 389 Md. 243, 299 (2005) (setting forth the arbitrary and capricious standard in Maryland).

Denial of special exceptions due to environmental justifications not unique to the proposed use are arbitrary and in violation of the zoning power. In *Mossburg v. Montgomery County*, 107 Md. App. 1 (1995), this Court reversed the denial of a special exception to locate a waste transfer station in the Southlawn Lane industrial corridor of Rockville. The Board cited potential for water pollution and traffic congestion in denying the special exception. Addressing the water pollution issue, this Court noted

¹³ The Court applied the same rationale to eligibility for medical monitoring. 433 Md. at 390.

that storm water runoff from all properties in this area ran into the creek and there were other industrial uses, such that impact from runoff was inherent in any development:

. . . there was insufficient evidence (virtually none) from which a reasoning mind could have determined that the impact at this site on Southlawn Lane was unique or different than the impact would be elsewhere in this I-2 Industrial Zone . . . or, for that matter, any different than in any other I-2 Zone in the County. Accordingly, this finding of the Board was not based upon substantial evidence. It was a finding arbitrarily made.

107 Md. App. at 26; *see also People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54 (2008) (denial of a special exception not sustainable merely because of evidence a use would produce undesirable impacts of runoff and traffic congestion).

The increased emissions are minimal within the Residential Neighborhood and will comply with applicable standards. Accordingly, the rejection of the Special Exception based on air quality concerns was arbitrary and capricious, and not based upon substantial evidence.

III. The Board's finding of incompatibility is erroneous

The Board's finding of incompatibility with the residential neighborhood based on traffic and parking congestion is contrary to the evidence. There are also inconsistencies with an abundance of specific factual findings made by the Board that the Board did not and could not resolve. The Circuit Court affirmed but signaled its discomfort with that decision, stating: “there is some ambiguity in the record regarding the potential impact of traffic congestion and physical activity, and it is possible that another fact finder may

have reached a different conclusion..." (E513). Respectfully, the conclusion of the Board as to compatibility is directly contradicted both by the Board's specific findings and the uncontroverted evidence. The Board's finding of incompatibility based on adverse health effects fails for the reasons previously stated.

The Board found that the proposed station would be incompatible with "the adjacent residential neighborhood to the south, southwest and southeast of the subject site" due to potential adverse health impacts combined with traffic congestion, parking congestion, and physical activity. (E206-07).

The Hearing Examiner finds that the compatibility issues arise in this case not because the proposal here is for a gas station, but because it is for this particular type of gas station (a very large one with lines of idling cars) located in this particular neighborhood (i.e., 118 feet from single family residences, 375 feet from a neighborhood pool and 874 feet from a school with severely disabled children.) It is these particulars which render the proposal incompatible, not the mere fact that it calls for a gas station in a mall parking lot.

To be clear, the Hearing Examiner is not finding that the additional traffic congestion, parking congestion and physical activity rise to the level of a legal "nuisance;" rather he is finding that these adverse effects, all of which are linked to the unusual size of the proposed gas station, when combined with the adverse health impacts, which are also linked to the unusual size of the proposed station and its proximity to the residential neighborhood, the Kenmont pool and the Stephen Knolls School, create an incompatible situation. (E206-07).

This finding cannot sustain the denial. The traffic and parking congestion would occur, if at all, at the Mall and at entrances to the Mall, both of which are physically separated from the Residential Neighborhood. (E565). "Physical activity" is not a separate basis for denial because it merely refers to "increased traffic and parking lot congestion, as well as excessive gas-line queuing at the pumps." (E192).

The Ring Road provides a barrier between the proposed site and the Residential Neighborhood, and there is no outlet connecting the Ring Road with the Residential Neighborhood. (E565). In addition, the Mall property is elevated, ranging from 10 to 30 feet higher than the surrounding neighborhood properties. (E1373). Costco's application includes adding an eight foot green screen wall on the outside of Ring Road. *Id.* The vegetated green screen will conceal the gas station from the residential homes even when someone is looking out a second floor window of the nearest properties. Between the Mall and residential neighborhood is a forested buffer. The forested buffer ranges in depth from 25 feet to 140 feet (average depth is 70 to 80 feet). Costco would enhance this forested buffer by planting and maintaining more than 100 trees.

Any incremental increase in traffic to the Mall will not occur in the residential neighborhood. (E564-65). This traffic will blend in with the existing traffic associated with the Wheaton Westfield Mall. Increased traffic counts for the station are within those already approved for the Mall in 1999. (E1430). Surrounding traffic on Georgia Avenue, University Boulevard and Veirs Mill Road dwarfs any contribution by the Costco station.¹⁴ In addition, up to 50% of the anticipated gas station customers are already coming to the Mall to shop. (E557-58).

Costco's traffic expert Wes Guckert testified that the effect on public roads in the CBD "is going to be not even noticeable at all, imperceptible." (E1123). The

¹⁴ Average daily traffic volume on Georgia Avenue is 50,000 trips; on University Boulevard it is 20-25,000 trips, and on Veirs Mill Rd it is 20-25,000 trips. (E565). This compares to the total existing daily trips on the Mall Ring Road of 3,000 trips. *Id.* The proposed station would add about 70 new trips during peak hours.

Opposition provided no "independent expert projections of traffic from the gas station" and instead focused on current conditions. (E186). Three Opposition witnesses testified about their concerns with more cars coming to the Mall, and one speculated about what impact the traffic might have on nearby roads. *See* (E175-182). But there was no substantial evidence that traffic generated by the gas station will have an adverse effect on the Residential Neighborhood.

Consistent with Mr. Guckert's testimony, the Board found "that most of the adverse effects from the additional traffic and congestion will occur on Westfield's private property." (E184). Westfield has, of course, consented to these effects and did not join the protest here. In addition, County Technical Staff, which is charged with examining traffic conditions, determined the traffic to be compatible with the site. (E182-83).

Similarly, the Board's analysis of parking at the Mall shows no impact on the residential neighborhood. Gas station customers will have no reason to park in the residential neighborhood.

The Board made numerous specific findings that demonstrate *compatibility* with the neighborhood, including the Residential Neighborhood, and many of these findings relate to traffic and parking. For instance the following affirmative findings show that traffic and parking will be compatible with the Residential Neighborhood:

- The proposed use will not cause objectionable noise, vibrations, odors, dust, illumination or glare (E251);

- There is a currently valid determination of adequate public facilities [including roads] for the whole of Wheaton Plaza, and the Board is not empowered to make a contrary determination (E252);
- The proposed use would not reduce the safety of vehicular or pedestrian traffic (E253);
- The proposed use will not cause a nuisance because of noise, odors, or physical activity (E253);
- The proposed site is more than 300 feet from the lot line of any public or private school or any park, playground, day care center, or any outdoor use characterized as cultural, entertainment and recreation use (E254-55);
- The proposed use will comply with requirements to be screened by a solid wall or a substantial solid fence, not less than five feet in height, together with a three foot planting strip on the outside of such wall or fence planted in shrubs and evergreens (E259);
- The use will not cause any light spillage or glare into any residential zone (E256, 260);
- The proposal is in compliance with parking space requirements; (E257, 258).

These findings are based on the evidence cited above and they are inconsistent with the conclusion that traffic, parking and physical activity are incompatible with the Residential Neighborhood.

The findings that relate only to general compatibility still indicate that increases in traffic and parking are not of a degree that will change the overall character of the neighborhood, including the Mall, the commercial areas and the Residential Neighborhood. For instance, the Board found:

- The use is consistent with the Wheaton Central Business District and Vicinity Sector plan (E249);
- The proposed use will not be detrimental to the economic value or development of surrounding properties at the site (E250);
- The proposed use will not alter the nature of the area (E251);

- The proposed use would not adversely affect logical development of the neighborhood (E254).

If traffic and parking issues were material, one would expect economic loss, an alteration of the nature of the area, and adverse impacts on logical development.

Inconsistency in findings and conclusions both demonstrates the weakness of the conclusions but also supports a finding that the conclusions are arbitrary and capricious. This court held that “when an administrative agency acts in a manner that is inconsistent with its earlier decisions, without providing an adequate explanation for the different results, it acts arbitrarily and capriciously.” *Bd. of Educ. of Somerset Cty. v. Somerset Advocates for Educ.*, 189 Md. App. 385, 401 (2009); *also Eaton v. Rosewood Ctr.*, 86 Md. App. 366, 375 (1991). Here the Board was inconsistent within the same opinion and does not adequately explain the difference in its conclusions.¹⁵

The Opposition's speculative concerns about traffic and parking impacts are analogous to those addressed in *Mossburg v. Montgomery County*, 107 Md.App. 1, (1995), discussed above, and *Anderson v. Sawyer*, 23 Md.App. 612, 617 (1974). In *Mossburg*, this Court reversed denial of a special exception based partly on increased traffic, noting that the opposition presented no expert testimony, and that the "generic traffic concerns of appellees do not constitute substantial evidence upon which the Board could have based its decisions." 107 Md. App. at 27. Similarly, in *Anderson*, this Court

¹⁵ Under the Zoning Ordinance, "the fact that a proposed use complies with all specific standards and requirements to grant a special exceptions does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted." § 59- 1.21(a)(2). Still, the Hearing Examiner's findings recited above contradict his findings relating to traffic and parking congestion.

found that the Baltimore County Board of Appeals denial of a request for a special exception for a funeral home, in part, based on concerns about traffic could not stand where the opposition's expert conducted no study about the potential impact of anticipated traffic and "there are no facts provided by either the expert or laymen to support the conclusion that increased traffic ... is 'undesirable'". 23 Md. App. at 618-19.¹⁶ The holdings of *Mossburg* and *Anderson* apply with equal force to the instant case.

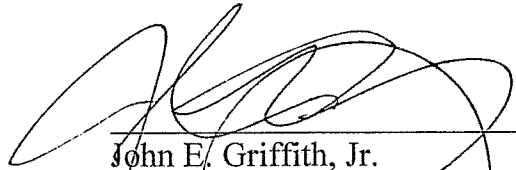
For the reasons outlined, the Board's findings of incompatibility in this case based on traffic congestion, parking congestion and physical activity are not supported by substantial evidence. Neither are the Board's findings of incompatibility based on air emissions, which should also be reversed on the same basis as its finding on potential adverse health effects.

¹⁶ The Board relied exclusively on *Montgomery County v. Butler*, 417 Md. 271 (2010), to support its finding that the station is incompatible with the residential neighborhood but did no comparison to the facts of this case. The *Butler* case is easily distinguishable based on adjacency and the very different character of the two neighborhoods.

CONCLUSION

For all the reasons stated herein, the decisions of the Board and the Circuit Court should be reversed and the case remanded with instructions to allow the Special Exception.

Respectfully submitted,



John E. Griffith, Jr.
john.griffith@dlapiper.com

Paul Wierenga
paul.wierenga@dlapiper.com

DLA PIPER LLP (US)
6225 Smith Avenue
Baltimore, Maryland 21209-3600
(410) 580-4166 (Telephone)
(410) 580-3166 (Facsimile)

Attorneys for Appellant
COSTCO WHOLESALE
CORPORATION

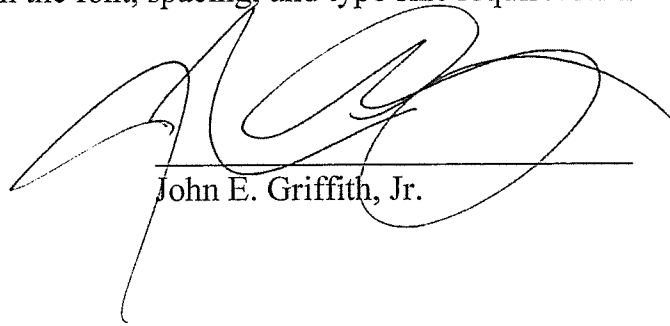
Patricia A. Harris
Michael J. Goecke
LERCH, EARLY & BREWER, CHTD.
3 Bethesda Metro Center, Suite 460
Bethesda, Maryland 20814
(301) 841-3832 (Telephone)
(301) 347-3756 (Facsimile)

Of Counsel for Appellant
COSTCO WHOLESALE CORPORATION

CERTIFICATION OF WORD COUNT AND COMPLIANCE
WITH RULE 8-112

1. This brief contains 8,981 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.



John E. Griffith, Jr.

TABLE OF CONTENTS TO STATUTORY APPENDIX

42 U.S.C. § 7409.....App. 1

42 U.S.C. § 7410... ..App. 2

Md. Env. Code § 2-101.....App. 10

Md. Env. Code § 2-102.....App. 10

Md. Env. Code § 2-103.....App. 11

Md. Env. Code § 2-104.....App. 12

Md. Env. Code § 2-301.....App. 13

Md. Env. Code § 2-302.....App.13

Md. Env. Code § 2-303.....App. 14

40 C.F.R. § 52.1070App. 15

78 Fed. Reg. 9593-9501 (Feb. 11, 2013)App. 36

78 Fed. Reg. 9650.....App. 39

Montgomery County Code, Chapter 3.....App. 41

Montgomery County Zoning Code § 59-G-1.2 (July 2013 Version).....App. 54

Montgomery County Zoning Code § 59-G-2.06 (Oct. 2012 Version)App. 60

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter I. Programs and Activities
Part A. Air Quality and Emissions Limitations (Refs & Annos)

42 U.S.C.A. § 7409

§ 7409. National primary and secondary ambient air quality standards

Currentness

(a) Promulgation

(1) The Administrator--

(A) within 30 days after December 31, 1970, shall publish proposed regulations prescribing a national primary ambient air quality standard and a national secondary ambient air quality standard for each air pollutant for which air quality criteria have been issued prior to such date; and

(B) after a reasonable time for interested persons to submit written comments thereon (but no later than 90 days after the initial publication of such proposed standards) shall by regulation promulgate such proposed national primary and secondary ambient air quality standards with such modifications as he deems appropriate.

(2) With respect to any air pollutant for which air quality criteria are issued after December 31, 1970, the Administrator shall publish, simultaneously with the issuance of such criteria and information, proposed national primary and secondary ambient air quality standards for any such pollutant. The procedure provided for in paragraph (1)(B) of this subsection shall apply to the promulgation of such standards.

(b) Protection of public health and welfare

(1) National primary ambient air quality standards, prescribed under subsection (a) of this section shall be ambient air quality standards the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health. Such primary standards may be revised in the same manner as promulgated.

(2) Any national secondary ambient air quality standard prescribed under subsection (a) of this section shall specify a level of air quality the attainment and maintenance of which in the judgment of the Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. Such secondary standards may be revised in the same manner as promulgated.

(c) National primary ambient air quality standard for nitrogen dioxide

§ 7409. National primary and secondary ambient air quality standards, 42 USCA § 7409

The Administrator shall, not later than one year after August 7, 1977, promulgate a national primary ambient air quality standard for NO₂ concentrations over a period of not more than 3 hours unless, based on the criteria issued under section 7408(c) of this title, he finds that there is no significant evidence that such a standard for such a period is requisite to protect public health.

(d) Review and revision of criteria and standards; independent scientific review committee; appointment; advisory functions

(1) Not later than December 31, 1980, and at five-year intervals thereafter, the Administrator shall complete a thorough review of the criteria published under section 7408 of this title and the national ambient air quality standards promulgated under this section and shall make such revisions in such criteria and standards and promulgate such new standards as may be appropriate in accordance with section 7408 of this title and subsection (b) of this section. The Administrator may review and revise criteria or promulgate new standards earlier or more frequently than required under this paragraph.

(2)(A) The Administrator shall appoint an independent scientific review committee composed of seven members including at least one member of the National Academy of Sciences, one physician, and one person representing State air pollution control agencies.

(B) Not later than January 1, 1980, and at five-year intervals thereafter, the committee referred to in subparagraph (A) shall complete a review of the criteria published under section 7408 of this title and the national primary and secondary ambient air quality standards promulgated under this section and shall recommend to the Administrator any new national ambient air quality standards and revisions of existing criteria and standards as may be appropriate under section 7408 of this title and subsection (b) of this section.

(C) Such committee shall also (i) advise the Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised national ambient air quality standards, (ii) describe the research efforts necessary to provide the required information, (iii) advise the Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity, and (iv) advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 109, as added Dec. 31, 1970, Pub.L. 91-604, § 4(a), 84 Stat. 1679; amended Aug. 7, 1977, Pub.L. 95-95, Title I, § 106, 91 Stat. 691.)

42 U.S.C.A. § 7409, 42 USCA § 7409

Current through P.L. 114-143. Also includes P.L. 114-145 to 114-163.

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter I. Programs and Activities
Part A. Air Quality and Emissions Limitations (Refs & Annos)

42 U.S.C.A. § 7410

§ 7410. State implementation plans for national primary and secondary ambient air quality standards

Currentness

(a) Adoption of plan by State; submission to Administrator; content of plan; revision; new sources; indirect source review program; supplemental or intermittent control systems

(1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 7409 of this title for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State shall adopt and submit to the Administrator (either as a part of a plan submitted under the preceding sentence or separately) within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance, and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State. Unless a separate public hearing is provided, each State shall consider its plan implementing such secondary standard at the hearing required by the first sentence of this paragraph.

(2) Each implementation plan submitted by a State under this chapter shall be adopted by the State after reasonable notice and public hearing. Each such plan shall--

(A) include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter;

(B) provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to--

(i) monitor, compile, and analyze data on ambient air quality, and

(ii) upon request, make such data available to the Administrator;

(C) include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D of this subchapter;

§ 7410. State implementation plans for national primary and..., 42 USCA § 7410

(D) contain adequate provisions--

(i) prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will--

(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or

(II) interfere with measures required to be included in the applicable implementation plan for any other State under part C of this subchapter to prevent significant deterioration of air quality or to protect visibility,

(ii) insuring compliance with the applicable requirements of sections 7426 and 7415 of this title (relating to interstate and international pollution abatement);

(E) provide **(i)** necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof), **(ii)** requirements that the State comply with the requirements respecting State boards under section 7428 of this title, and **(iii)** necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision;

(F) require, as may be prescribed by the Administrator--

(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources,

(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and

(iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this chapter, which reports shall be available at reasonable times for public inspection;

(G) provide for authority comparable to that in section 7603 of this title and adequate contingency plans to implement such authority;

(H) provide for revision of such plan--

(i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and

§ 7410. State implementation plans for national primary and..., 42 USCA § 7410

(ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this chapter;

(I) in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D of this subchapter (relating to nonattainment areas);

(J) meet the applicable requirements of section 7421 of this title (relating to consultation), section 7427 of this title (relating to public notification), and part C of this subchapter (relating to prevention of significant deterioration of air quality and visibility protection);

(K) provide for--

(i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and

(ii) the submission, upon request, of data related to such air quality modeling to the Administrator;

(L) require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this chapter, a fee sufficient to cover--

(i) the reasonable costs of reviewing and acting upon any application for such a permit, and

(ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action),

until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under subchapter V of this chapter; and

(M) provide for consultation and participation by local political subdivisions affected by the plan.

(3)(A) Repealed. Pub.L. 101-549, Title I, § 101(d)(1), Nov. 15, 1990, 104 Stat. 2409

(B) As soon as practicable, the Administrator shall, consistent with the purposes of this chapter and the Energy Supply and Environmental Coordination Act of 1974 [15 U.S.C.A. § 791 et seq.], review each State's applicable implementation plans and report to the State on whether such plans can be revised in relation to fuel burning stationary sources (or persons supplying fuel to such sources) without interfering with the attainment and maintenance of any national ambient air quality standard within the period permitted in this section. If the Administrator determines that any such plan can be revised, he shall notify the State that a plan revision may be submitted by the State. Any plan revision which is submitted by the State shall, after public notice

§ 7410. State implementation plans for national primary and..., 42 USCA § 7410

and opportunity for public hearing, be approved by the Administrator if the revision relates only to fuel burning stationary sources (or persons supplying fuel to such sources), and the plan as revised complies with paragraph (2) of this subsection. The Administrator shall approve or disapprove any revision no later than three months after its submission.

(C) Neither the State, in the case of a plan (or portion thereof) approved under this subsection, nor the Administrator, in the case of a plan (or portion thereof) promulgated under subsection (c) of this section, shall be required to revise an applicable implementation plan because one or more exemptions under section 7418 of this title (relating to Federal facilities), enforcement orders under section 7413(d) of this title, suspensions under subsection (f) or (g) of this section (relating to temporary energy or economic authority), orders under section 7419 of this title (relating to primary nonferrous smelters), or extensions of compliance in decrees entered under section 7413(c) of this title (relating to iron- and steel-producing operations) have been granted, if such plan would have met the requirements of this section if no such exemptions, orders, or extensions had been granted.

(4) Repealed. Pub.L. 101-549, Title I, § 101(d)(2), Nov. 15, 1990, 104 Stat. 2409

(5)(A)(i) Any State may include in a State implementation plan, but the Administrator may not require as a condition of approval of such plan under this section, any indirect source review program. The Administrator may approve and enforce, as part of an applicable implementation plan, an indirect source review program which the State chooses to adopt and submit as part of its plan.

(ii) Except as provided in subparagraph (B), no plan promulgated by the Administrator shall include any indirect source review program for any air quality control region, or portion thereof.

(iii) Any State may revise an applicable implementation plan approved under this subsection to suspend or revoke any such program included in such plan, provided that such plan meets the requirements of this section.

(B) The Administrator shall have the authority to promulgate, implement and enforce regulations under subsection (c) of this section respecting indirect source review programs which apply only to federally assisted highways, airports, and other major federally assisted indirect sources and federally owned or operated indirect sources.

(C) For purposes of this paragraph, the term "indirect source" means a facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution. Such term includes parking lots, parking garages, and other facilities subject to any measure for management of parking supply (within the meaning of subsection (c)(2)(D)(ii) of this section), including regulation of existing off-street parking but such term does not include new or existing on-street parking. Direct emissions sources or facilities at, within, or associated with, any indirect source shall not be deemed indirect sources for the purpose of this paragraph.

(D) For purposes of this paragraph the term "indirect source review program" means the facility-by-facility review of indirect sources of air pollution, including such measures as are necessary to assure, or assist in assuring, that a new or modified indirect source will not attract mobile sources of air pollution, the emissions from which would cause or contribute to air pollution concentrations--

§ 7410. State implementation plans for national primary and..., 42 USCA § 7410

(i) exceeding any national primary ambient air quality standard for a mobile source-related air pollutant after the primary standard attainment date, or

(ii) preventing maintenance of any such standard after such date.

(E) For purposes of this paragraph and paragraph (2)(B), the term "transportation control measure" does not include any measure which is an "indirect source review program".

(6) No State plan shall be treated as meeting the requirements of this section unless such plan provides that in the case of any source which uses a supplemental, or intermittent control system for purposes of meeting the requirements of an order under section 7413(d) of this title or section 7419 of this title (relating to primary nonferrous smelter orders), the owner or operator of such source may not temporarily reduce the pay of any employee by reason of the use of such supplemental or intermittent or other dispersion dependent control system.

(b) Extension of period for submission of plans

The Administrator may, wherever he determines necessary, extend the period for submission of any plan or portion thereof which implements a national secondary ambient air quality standard for a period not to exceed 18 months from the date otherwise required for submission of such plan.

(c) Preparation and publication by Administrator of proposed regulations setting forth implementation plan; transportation regulations study and report; parking surcharge; suspension authority; plan implementation

(1) The Administrator shall promulgate a Federal implementation plan at any time within 2 years after the Administrator--

(A) finds that a State has failed to make a required submission or finds that the plan or plan revision submitted by the State does not satisfy the minimum criteria established under subsection (k)(1)(A) of this section, or

(B) disapproves a State implementation plan submission in whole or in part,

unless the State corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such Federal implementation plan.

(2)(A) Repealed. Pub.L. 101-549, Title I, § 101(d)(3)(A), Nov. 15, 1990, 104 Stat. 2409

(B) No parking surcharge regulation may be required by the Administrator under paragraph (1) of this subsection as a part of an applicable implementation plan. All parking surcharge regulations previously required by the Administrator shall be void upon June 22, 1974. This subparagraph shall not prevent the Administrator from approving parking surcharges if they are adopted and submitted by a State as part of an applicable implementation plan. The Administrator may not condition approval of any implementation plan submitted by a State on such plan's including a parking surcharge regulation.

(2) The Administrator may promulgate such regulations as may be reasonably necessary to carry out the purpose of this subsection.

(i) Modification of requirements prohibited

Except for a primary nonferrous smelter order under section 7419 of this title, a suspension under subsection (f) or (g) of this section (relating to emergency suspensions), an exemption under section 7418 of this title (relating to certain Federal facilities), an order under section 7413(d) of this title (relating to compliance orders), a plan promulgation under subsection (c) of this section, or a plan revision under subsection (a)(3) of this section, no order, suspension, plan revision, or other action modifying any requirement of an applicable implementation plan may be taken with respect to any stationary source by the State or by the Administrator.

(j) Technological systems of continuous emission reduction on new or modified stationary sources; compliance with performance standards

As a condition for issuance of any permit required under this subchapter, the owner or operator of each new or modified stationary source which is required to obtain such a permit must show to the satisfaction of the permitting authority that the technological system of continuous emission reduction which is to be used at such source will enable it to comply with the standards of performance which are to apply to such source and that the construction or modification and operation of such source will be in compliance with all other requirements of this chapter.

(k) Environmental Protection Agency action on plan submissions

(l) Completeness of plan submissions

(A) Completeness criteria

Within 9 months after November 15, 1990, the Administrator shall promulgate minimum criteria that any plan submission must meet before the Administrator is required to act on such submission under this subsection. The criteria shall be limited to the information necessary to enable the Administrator to determine whether the plan submission complies with the provisions of this chapter.

(B) Completeness finding

Within 60 days of the Administrator's receipt of a plan or plan revision, but no later than 6 months after the date, if any, by which a State is required to submit the plan or revision, the Administrator shall determine whether the minimum criteria established pursuant to subparagraph (A) have been met. Any plan or plan revision that a State submits to the Administrator, and that has not been determined by the Administrator (by the date 6 months after receipt of the submission) to have failed to meet the minimum criteria established pursuant to subparagraph (A), shall on that date be deemed by operation of law to meet such minimum criteria.

(C) Effect of finding of incompleteness

§ 7410. State implementation plans for national primary and..., 42 USCA § 7410

Where the Administrator determines that a plan submission (or part thereof) does not meet the minimum criteria established pursuant to subparagraph (A), the State shall be treated as not having made the submission (or, in the Administrator's discretion, part thereof).

(2) Deadline for action

Within 12 months of a determination by the Administrator (or a determination deemed by operation of law) under paragraph (1) that a State has submitted a plan or plan revision (or, in the Administrator's discretion, part thereof) that meets the minimum criteria established pursuant to paragraph (1), if applicable (or, if those criteria are not applicable, within 12 months of submission of the plan or revision), the Administrator shall act on the submission in accordance with paragraph (3).

(3) Full and partial approval and disapproval

In the case of any submittal on which the Administrator is required to act under paragraph (2), the Administrator shall approve such submittal as a whole if it meets all of the applicable requirements of this chapter. If a portion of the plan revision meets all the applicable requirements of this chapter, the Administrator may approve the plan revision in part and disapprove the plan revision in part. The plan revision shall not be treated as meeting the requirements of this chapter until the Administrator approves the entire plan revision as complying with the applicable requirements of this chapter.

(4) Conditional approval

The Administrator may approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision. Any such conditional approval shall be treated as a disapproval if the State fails to comply with such commitment.

(5) Calls for plan revisions

Whenever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant national ambient air quality standard, to mitigate adequately the interstate pollutant transport described in section 7506a of this title or section 7511c of this title, or to otherwise comply with any requirement of this chapter, the Administrator shall require the State to revise the plan as necessary to correct such inadequacies. The Administrator shall notify the State of the inadequacies, and may establish reasonable deadlines (not to exceed 18 months after the date of such notice) for the submission of such plan revisions. Such findings and notice shall be public. Any finding under this paragraph shall, to the extent the Administrator deems appropriate, subject the State to the requirements of this chapter to which the State was subject when it developed and submitted the plan for which such finding was made, except that the Administrator may adjust any dates applicable under such requirements as appropriate (except that the Administrator may not adjust any attainment date prescribed under part D of this subchapter, unless such date has elapsed).

(6) Corrections

Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

Annotated Code of Maryland
Article - Environment

§2-101.

(a) In this title the following words have the meanings indicated.

(b) “Air pollution” means the presence in the outdoor atmosphere of any substance that is present in such quantities and is of such duration that it:

(1) May be predicted with reasonable certainty to be injurious to property or to human, plant, or animal life; or

(2) Unreasonably interferes with the proper enjoyment of the property of others because of the emission of odors, solids, vapors, liquids, or gases.

(c) “Council” means the Air Quality Control Advisory Council.

(d) “Emergency” means:

(1) A condition of such public gravity and urgency that it requires immediate response; or

(2) A condition that is predicted to a reasonable degree of certainty to require immediate action to carry out the provisions of this title.

(e) (1) “Emission standard” means a requirement that limits the quantity, quality, rate, or concentration of emissions from a source.

(2) “Emission standard” includes any requirement that relates to the operation or maintenance of a source to assure continuous emission reduction.

(f) “Person” includes any public or municipal corporation and any agency, bureau, department, or instrumentality of federal, State, or local government.

(g) “Political subdivision” means a county or municipal corporation of this State.

(h) “Regulated emissions” means the actual rate of emissions, in tons per year, of any registered pollutant emitted by a source, to be calculated using criteria consistent with 40 C.F.R. Part 70 (Operating Permit Program).

(i) “Source” means any person or property that contributes to air pollution.

§2-102.

It is the policy of this State to maintain the degree of purity of the air necessary to protect the health, the general welfare, and property of the people of this State.

Annotated Code of Maryland
Article - Environment

§2-103.

(a) In addition to the powers set forth elsewhere in this title, the Department may obtain any federal or other funds that are available to this State for purposes that are within the scope of this title.

(b) In addition to the duties set forth elsewhere in this title, the Department:

(1) Has jurisdiction over emissions into the air and ambient air quality in this State;

(2) Is responsible for monitoring ambient air quality in this State;
and

(3) Shall coordinate all State agency programs on ambient air quality control.

(c) The Department may contract for or otherwise arrange for the use of the facilities and services of appropriate agencies of political subdivisions in carrying out the Department's monitoring duties under this title.

§2-103.1.

Subject to § 21246 of the State Government Article, the Secretary, in conjunction with the Secretary of Transportation, shall furnish a joint report, within 30 days after the date Congress modifies the provisions of the federal Clean Air Act, to the Legislative Policy Committee, the Senate Judicial Proceedings Committee, and the House Environmental Matters Committee outlining the status of changes in the federal Clean Air Act as of that date and all other related and pertinent information.

§2-103.2.

(a) In this section, "ambient air monitoring data" means measured concentrations of air pollutants, including air pollutants for which there are no established ambient air quality standards or emission standards, obtained from an ambient air monitor established by the Department.

(b) On or before January 1, 2000, and each year thereafter, the Department shall provide public access to all air monitoring data in the State through the Internet.

(c) Ambient air monitoring data provided under this section:

(1) May be in summary form; and

Annotated Code of Maryland
Article - Environment

(2) Shall include all validated ambient air monitoring data for the 2 most recent calendar years for which data are available.

§2-104.

(a) (1) Except as provided in this section, this title does not limit the power of a political subdivision to adopt ordinances, rules, or regulations that set emission standards or ambient air quality standards.

(2) A political subdivision may not adopt any ordinance, rule, or regulation that sets an emission standard or ambient air quality standard less stringent than the standards set by the Department under this title.

(b) The governing body of any political subdivision may ask the Department to adopt rules and regulations that set more restrictive emission standards or ambient air quality standards in that political subdivision.

Annotated Code of Maryland
Article - Environment

§2-301.

(a) The Department:

(1) May adopt rules and regulations for the control of air pollution in this State, including testing, monitoring, record keeping, and reporting requirements; and

(2) Shall adopt rules and regulations that establish standards and procedures to be followed whenever pollution of the air reaches an emergency condition.

(b) In adopting any rule or regulation under this title, the Department shall consider, among other things:

(1) The residential, commercial, or industrial nature of the area affected;

(2) Zoning;

(3) The nature and source of various kinds of air pollution;

(4) The problems of any commercial or industrial establishment that may be affected by the rule or regulation; and

(5) The environmental conditions, population density, and topography of any area that may be affected by the rule or regulation.

(c) Any rule or regulation adopted under this title that relates to grain drying operations shall be adopted with the advice and consent of the State Department of Agriculture.

§2-302.

(a) The Department shall determine and may alter air quality control areas into which this State is divided.

(b) The Department shall adopt rules and regulations that set emission standards and ambient air quality standards for each of the air quality control areas in this State.

(c) (1) Unless a political subdivision requests a more restrictive standard under § 2104 of this title, the Department shall set ambient air quality standards for pollutants that are identical to the standards for pollutants for which national primary or secondary ambient air quality standards have been set by the federal government.

Annotated Code of Maryland
Article - Environment

(2) To protect the public health, the general welfare, and property of the people of this State, the Department may set State ambient air quality standards for substances for which national ambient air quality standards have not been set by the federal government.

(3) If the Secretary finds that transportation through the air is a significant factor in the buildup of a pollutant in a substance other than air and that monitoring the substance facilitates control of the pollutant, a State ambient air quality standard may establish a maximum concentration of the pollutant in that substance.

(d) (1) Except as provided in paragraph (2) of this subsection, if national ambient air quality standards are attained in an air quality control area, the Department shall set emission standards for that area based on the goal of achieving emission levels that are not more restrictive than necessary to attain and maintain the ambient air quality standards in that area.

(2) The limitations of paragraph (1) of this subsection do not apply to the extent that:

(i) A political subdivision requests a more restrictive standard under § 2104 of this title; or

(ii) New source performance standards, national prevention of significant deterioration requirements, national emission standards for hazardous pollutants, or any other requirements of the federal Clean Air Act apply.

(3) For those emissions for which no national ambient air quality standards have been set, the Secretary may set emission standards and requirements for various classes of sources.

§2-303.1.

The Department may not adopt regulations to implement Stage II of the Program for Volatile Organic Emissions Control from gasoline retailing operations unless:

(1) The Department is mandated by the United States Environmental Protection Agency;

(2) The Department is unable to find other control strategies; and

(3) The Environmental Protection Agency publishes notice in the Federal Register that the State of Maryland is not in compliance with the provisions of the Clean Air Act (42 U.S.C. §§ 7401 through 7602).

§52.1070

40 CFR Ch. I (7-1-15 Edition)

Department of Environmental Protection on December 3, 2004, January 5, 2005, October 31, 2005, and November 9, 2005.

(i) Incorporation by reference.

(A) Chapter 151 of the Maine Department of Environmental Protection Regulations, "Architectural and Industrial Maintenance (AIM) Coatings," effective in the State of Maine on November 1, 2005.

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

(60) [Reserved]

(61) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on April 27, 2005.

(i) Incorporation by reference.

(A) Chapter 102 of Maine Department of Environmental Protection Rules, entitled "Open Burning," effective in the State of Maine on April 25, 2005.

(B) State of Maine MAPA 1 form which provides certification that the Attorney General approved the rule as to form and legality, dated April 12, 2005.

(62) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on July 14, 2004, and February 8, 2006.

(i) Incorporation by reference.

(A) Chapter 100 of the Maine Department of Environmental Protection Regulations, "Definitions," effective in the State of Maine December 24, 2005.

(B) Chapter 137 of the Maine Department of Environmental Protection Regulations, "Emission Statements," effective in the State of Maine on July 6, 2004, with the exception of the following sections which the state did not include in its SIP revision request: section 137.1.C; section 137.1.E; section 137.1.F; section 137.2.A through F; section 137.2.H; section 137.3.B; section 137.3.C; section 137.4.D(4), from the sentence beginning with "Greenhouse gases" to the end of this section; the note within section 137.D(5); section 137(E), and; Appendix A.

(ii) Additional materials.

(A) Nonregulatory portions of these submittals.

(B) Correspondence from David W. Wright of the Maine DEP dated June 6,

2006, indicating which portions of Chapter 137 should not be incorporated into the State's SIP.

(63) Revision to Chapter 141 "Conformity of General Federal Actions," submitted by the Maine Department of Environmental Protection on June 29, 2007 and effective in the State of Maine on May 21, 2007.

(i) Incorporation by reference.

(A) Chapter 141 "Conformity of General Federal Actions" 1. Definition. Effective in the State of Maine on May 21, 2007.

(ii) Additional Materials.

(A) Chapter 141 "Conformity of General Federal Actions," 2. Conformity to State and Federal Implementation Plans. The Maine Department of Environmental Protection amended its incorporation-by-reference within Chapter 141.2 to reflect EPA's revision to the Federal General Conformity Rule for fine particulate matter promulgated on July 17, 2006 (71 FR 40420-40427); specifically 40 CFR 51.852 Definitions and 40 CFR 51.853 Applicability.

(64) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on October 3, 2007.

(i) Incorporation by reference.

(A) Maine Administrative Procedure Act (MAPA) 1 Form which provides certification that the Attorney General approved Chapter 139 "Transportation Conformity," as to form and legality, dated September 10, 2007.

(B) Chapter 139 of the Maine Department of Environmental Protection Regulations, "Transportation Conformity," effective in the State of Maine on September 19, 2007.

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

[37 FR 10870, May 31, 1972]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §52.1037, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

Subpart V—Maryland

§52.1070 Identification of plan.

(a) *Purpose and scope.* This section sets forth the applicable State implementation plan for Maryland under

section 110 of the Clean Air Act, 42 U.S.C. 7410, and 40 CFR part 51 to meet national ambient air quality standards.

(b) *Incorporation by reference.* (1) Material listed as incorporated by reference in paragraphs (c) and (d) was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The material incorporated is as it exists on the date of the approval, and notice of any change in the material will be published in the FEDERAL REGISTER. Entries in paragraphs (c) and (d) of this section with EPA approval dates on or after August 1, 2011 will be incorporated by reference in the next update to the SIP compilation.

(2)(i) EPA Region III certifies that the rules and regulations provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules and regulations which have been approved as part of the State implementation plan as of August 1, 2011.

(ii) EPA Region III certifies that the source-specific requirements provided by EPA at the addresses in paragraph

(b)(3) of this section are an exact duplicate of the officially promulgated source-specific requirements which have been approved in the notebook "40 CFR 52.1070(d)—Source-Specific Requirements" as part of the State implementation plan as of December 1, 2008. No additional revisions were made since between December 1, 2008 and August 1, 2011.

(3) Copies of the materials incorporated by reference may be inspected at the EPA Region III Office at 1650 Arch Street, Philadelphia, PA 19103. For further information, call (215) 814-2108; the EPA, Air and Radiation Docket and Information Center, Room Number 3334, EPA West Building, 1301 Constitution Avenue NW, Washington, DC 20460. For further information, call (202) 566-1742; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(c) *EPA approved regulations.*

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
26.11.01 General Administrative Provisions				
26.11.01.01	Definitions	7/8/13	11/25/14, 79 FR 70099	Revised .01B(37).
26.11.01.02	Relationship of Provisions in this Subtitle.	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(7).
26.11.01.03	Delineation of Areas	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(7).
26.11.01.04	Testing and Monitoring	3/5/12	1/25/13, 78 FR 5290	Amended section 04C.
26.11.01.05	Records and Information	6/30/97, 12/10/01	5/28/02, 67 FR 36810	(c)(172).
26.11.01.05-1	Emission Statements	12/7/92	10/12/94, 59 FR 51517	(c)(109).
26.11.01.06	Circumvention	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(7).
26.11.01.07	Malfunctions and Other Temporary Increases in Emissions.	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(7).
26.11.01.08	Determination of Ground Level Concentrations—Acceptable Techniques.	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(5).
26.11.01.09	Vapor Pressure of Gasoline	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(5)
26.11.01.10	Continuous Emission Monitoring (CEM) Requirements.	7/22/91	2/28/96, 61 FR 7418	(c)(108); TM90-01 was approved as "additional material", but not IBR'd.

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP—
Continued

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
26.11.02 Permits, Approvals, and Registration				
26.11.02.01	Definitions	5/8/95	2/27/03, 68 FR 9012	(c)(182); Excep- tions:26.11.02.01B(1), (1- 1), (4)-(6), (10), (15), (18), (22), (29)-(33), (37),(39), (42), (46), (49), (50), (54)
26.11.02.01	Definitions	3/5/12	2/28/13, 78 FR 13497	Revised .01B(44) and .01C(1).
26.11.02.02	General Provisions	5/8/95	2/27/03, 68 FR 9012	(c)(182); Exception: .02D.
26.11.02.03	Federally Enforceable Permits to Construct and State Permits to Operate.	5/8/95	2/27/03, 68 FR 9012	(c)(182).
26.11.02.04	Duration of Permits	5/8/95	2/27/03, 68 FR 9012	(c)(182); Exception: .04C(2).
26.11.02.05	Violation of Permits and Approvals.	5/8/95	2/27/03, 68 FR 9012	(c)(182).
26.11.02.06	Denial of Applications for State Permits and Approvals.	5/8/95, 6/16/97	2/27/03, 68 FR 9012	(c)(182).
26.11.02.07	Procedures for Denying, Revoking, or Reopening and Revising a Permit or Approval.	5/8/95	2/27/03, 68 FR 9012	(c)(182).
26.11.02.08	Late Applications and Delays in Acting on Applications.	5/8/95	2/27/03, 68 FR 9012	(c)(182).
26.11.02.09	Sources Subject to Permits to Construct and Approvals.	11/16/09	2/10/12, 77 FR 6963	Revised 26.11.02.09A(1), (2); limited approval.
26.11.02.10	Sources Exempt from Permits to Construct and Approvals.	8/11/11	6/12/12 77 FR 34808	Revised .10X
26.11.02.11	Procedures for Obtaining Permits to Construct Certain Significant Sources.	5/8/95, 6/16/97	2/27/03, 68 FR 9012	(c)(182); Exception: .11C.
26.11.02.12	Procedures for Obtaining Approvals of PSD Sources and NSR Sources, Permits to Construct, Permit to Construct MACT Determinations On a Case-by-Case Basis in Accordance with 40 CFR part 63, subpart B, and Certain 100-Ton Sources.	5/16/11	8/2/12, 77 FR 45949	Added .12A(2)
26.11.02.13	Sources Subject to State Permits to Operate.	5/8/95	2/27/03, 68 FR 9012	(c)(182).
26.11.02.14	Procedures for Obtaining State Permits to Operate and Permits to Construct Certain Sources and Permits to Construct Control Equipment on Existing Sources.	5/8/95, 6/16/97	2/27/03, 68 FR 9012	(c)(182).
26.11.04 Ambient Air Quality Standards				
26.11.04.02	Ambient Air Quality Standards, Definitions, Reference Conditions, and Methods of Measurement.	9/17/12	2/11/13, 78 FR 9593	
26.11.05 Air Quality Episode System				
26.11.05.01	Definitions	6/18/90	4/14/94, 59 FR 17698	(c)(100).
26.11.05.02	General Requirements	6/18/90	4/14/94, 59 FR 17698	(c)(100).
26.11.05.03	Air Pollution Episode Criteria	6/18/90	4/14/94, 59 FR 17698	(c)(100).
26.11.05.04	Standby Emissions Reduction Plan.	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(4).
26.11.05.05	Control Requirements and Standby Orders.	6/18/90	4/14/94, 59 FR 17698	(c)(100).
26.11.05.06	Tables	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(4).
26.11.06 General Emissions Standards, Prohibitions, and Restrictions				
26.11.06.01	Definitions	5/8/91	11/29/94, 59 FR 60908	(c)(102)(i)(B)(14).

Environmental Protection Agency

§ 52.1070

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP—
Continued

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
26.11.06.02 [Except: .02A(1)(e), (1)(g), (1)(h), (1)(i)].	Visible Emissions	11/24/03	8/1/07, 72 FR 41891	Revised paragraph 26.11.06.02A(2).
26.11.06.03	Particulate Matter	11/11/02	8/6/03, 68 FR 46487	(c)(181).
26.11.06.04	Carbon Monoxide In Areas III and IV.	1/5/88; re-codified, 8/1/88	4/7/93, 58 FR 18010	(c)(92).
26.11.06.05	Sulfur Compounds from Other than Fuel Burning Equipment.	11/11/02	8/6/03, 68 FR 46487	(c)(181).
26.11.06.06	Volatile Organic Compounds	9/22/97	5/7/01, 66 FR 22924	(c)(156) Note: On 2/27/03 (68 FR 9012), EPA approved a revised rule citation with a State effective date of 5/8/95 [(c)(182)(i)(C)]. (c)(90)(i)(B)(5).
26.11.06.10	Refuse Burning Prohibited In Certain Installations.	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(5).
26.11.06.14	Control of PSD Sources	7/8/13	11/25/14, 79 FR 70099	Revised .14B(1).
26.11.06.15	Nitrogen Oxides from Nitric Acid Plants.	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(5).
26.11.06.16	Tables	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(5).
26.11.07 Open Fires				
26.11.07.01	Definitions	5/22/95	6/11/02, 67 FR 39858	(c)(173).
26.11.07.02	General	5/22/95	2/25/97, 62 FR 8380	(c)(120).
26.11.07.03	Control Officer May Authorize Certain Open Fires.	8/11/97	6/11/02, 67 FR 39858	(c)(173).
26.11.07.04	Public Officers May Authorize Certain Fires.	5/22/95	2/25/97, 62 FR 8380	(c)(120).
26.11.07.05	Open Fires Allowed Without Authorization of Control Officer or Public Officer.	5/22/95	2/25/97, 62 FR 8380	(c)(120) .05A(3) & (4), and .05B(3) are State-enforceable only.
26.11.07.06	Safety Determinations at Federal Facilities.	8/11/97	6/11/02, 67 FR 39858	(c)(173).
10.18.08/26.11.08 Control of Incinerators				
10.18.08/ 26.11.08.01.	Definitions	9/12/05	9/15/08, 73 FR 53130	Definition of "crematory" is added.
10.18.08.02	Applicability	7/18/80	8/5/81, 46 FR 39818	(c)(45).
10.18.08.03	Prohibition of Certain Incinerators In Areas III and IV.	6/8/81	5/11/82, 47 FR 20126	(c)(58).
10.18.08/ 26.11.08.04.	Visible Emissions	11/24/03	8/1/07, 72 FR 41891	Revised paragraph 26.11.08.04C.
10.18.08/ 26.11.08.05.	Particulate Matter	9/12/05	9/15/08, 73 FR 53130	Sections .05A(3) and .05B(2)(a) are revised.
10.18.08.06	Prohibition of Unapproved Hazardous Waste Incinerators.	3/25/84	7/2/85, 50 FR 27245	(c)(82).
26.11.09 Control of Fuel Burning Equipment, Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations				
26.11.09.01	Definitions	9/20/10	2/22/11 78 FR 9650	Revision removes definition of "fuel-burning equipment." The SIP effective date is 4/25/11.
26.11.09.02	Applicability	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(7).
26.11.09.03	General Conditions for Fuel Burning Equipment.	6/21/04	7/6/05, 70 FR 38774	Revised paragraphs 26.11.09.03C(1) and .03C(2).
26.11.09.04	Prohibition of Certain New Fuel Burning Equipment.	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(7).
26.11.09.05	Visible Emissions	11/24/03	8/1/07, 72 FR 41891	Revised paragraph 26.11.09.05A(3).

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP—
Continued

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
26.11.09.06	Control of Particulate Matter	6/21/04	7/6/05, 70 FR 38774	Addition of paragraph 26.11.09.06C.
26.11.09.07	Control of Sulfur Oxides from Fuel Burning Equipment.	8/1/88	11/3/92, 57 FR 49651	(c)(90)(f)(B)(7).
26.11.09.08	Control of NO _x Emissions for Major Stationary Sources.	11/24/03	9/20/04, 69 FR 58170	(c)(191).
26.11.09.09	Tables and Diagrams	11/11/02	5/1/03, 68 FR 23206	(c)(183); Revised Table 1.
26.11.10 Control of Iron and Steel Production Installations				
26.11.10.01	Definitions	12/25/00	11/7/01, 66 FR 56222	(c)(163).
26.11.10.02	Applicability	11/2/98	9/7/01, 66 FR 46727	(c)(153).
26.11.10.03	Visible Emissions	6/29/09	7/27/2012 77 FR 44148	Revised paragraphs A. and D. of 26.11.10.03 for Sintering Plants.
26.11.10.04	Control of Particulate Matter	11/2/98	9/7/01, 66 FR 46727	(c)(153).
26.11.10.05	Sulfur Content Limitations for Coke Oven Gas.	11/2/98	9/7/01, 66 FR 46727	(c)(153).
26.11.10.05-1	Control of Carbon Monoxide Emissions from Basic Oxygen Furnaces.	9/12/05	2/9/10, 75 FR 6307	
26.11.10.08	Control of Volatile Organic Compounds from Iron and Steel Production Installations.	12/25/00	11/7/01 66 FR 56222	(c)(163).
26.11.10.07	Testing and Observation Procedures.	12/25/00	11/7/01, 66 FR 56222	(c)(163).
26.11.11 Control of Petroleum Products Installations, Including Asphalt Paving, Asphalt Concrete Plants, and Use of Waste Oils				
26.11.11.01	Applicability	8/1/88	11/3/92, 57 FR 49651	(c)(90)(f)(B)(9).
26.11.11.02	Asphalt Paving	4/26/93	1/6/95, 60 FR 2018	(c)(113)(f)(B)(7).
26.11.11.03	Asphalt Concrete Plants in Areas I, II, V, and VI.	8/1/88	11/3/92, 57 FR 49651	(c)(90)(f)(B)(9).
26.11.11.06	Use of Waste Oils as Fuel	8/1/88	11/3/92, 57 FR 49651	(c)(90)(f)(B)(9).
26.11.12 Control of Batch Type Hot-Dip Galvanizing Installations				
26.11.12.01	Definitions	5/8/95	7/25/00, 64 FR 45743	(c)(149).
26.11.12.02	Applicability	5/8/95	7/25/00, 64 FR 45743	(c)(149).
26.11.12.03	Prohibitions and Exemptions	5/8/95	7/25/00, 64 FR 45743	(c)(149).
26.11.12.04	Visible Emissions	8/1/88	11/3/92, 57 FR 49651	(c)(90)(f)(B)(10).
26.11.12.05	Particulate Matter	8/1/88	11/3/92, 57 FR 49651	(c)(90)(f)(B)(10).
26.11.12.06	Reporting Requirements	8/1/88	11/3/92, 57 FR 49651	(c)(90)(f)(B)(10).
26.11.13 Control of Gasoline and Volatile Organic Compound Storage and Handling				
26.11.13.01	Definitions	10/18/07	7/18/08, 73 FR 41268	(c)(113)(f)(B)(3).
26.11.13.02	Applicability and Exemption	4/26/93	1/6/95, 60 FR 2018	(c)(90)(f)(B)(12).
26.11.13.03	Large Storage Tanks	8/1/88	11/3/92, 57 FR 49651	(c)(132).
26.11.13.04	Loading Operations	8/11/97	12/22/98, 63 FR 70667	(c)(112).
26.11.13.05	Gasoline Leaks from Tank Trucks	2/15/93	1/6/95, 60 FR 2018	(c)(113)(f)(B)(5).
26.11.13.06	Plans for Compliance	4/26/93	1/6/95, 60 FR 2018	
26.11.13.07	Control of Gasoline and VOC Emissions from Portable Fuel Containers.	8/18/07	7/17/08, 73 FR 40970	
26.11.13.08	Control of VOC Emissions from Marine Vessel Loading.	10/18/07	7/18/08, 73 FR 41268	New Regulation.
26.11.14 Control of Emissions From Kraft Pulp Mills				
26.11.14.01	Definitions	1/8/01, 10/15/01	11/7/01, 66 FR 56220	(c)(170).
26.11.14.02	Applicability	1/8/01	11/7/01, 66 FR 56220	(c)(170).
26.11.14.06	Control of Volatile Organic Compounds.	1/8/01, 10/15/01	11/7/01, 66 FR 56220	(c)(170).

Environmental Protection Agency

§ 52.1070

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP—
Continued

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
26.11.17 Requirements for Major New Sources and Modifications				
26.11.17.01	Definitions	10/22/07	8/2/12, 77 FR 45949.	
26.11.17.02	Applicability	10/22/07	8/2/12, 77 FR 45949.	
26.11.17.03	General Conditions	10/22/07	8/2/12, 77 FR 45949.	
26.11.17.04	Creating Emission Reduction Credits (ERCs).	10/22/07	8/2/12, 77 FR 45949	Revised; Former Regulation .04 is repealed and replaced in its entirety.
26.11.17.05	Information on Emission Reductions and Certification.	10/22/07	8/2/12, 77 FR 45949	Revised; Former Regulation .05 is repealed and replaced in its entirety.
26.11.17.06	Transferring Emission Reduction Credits.	10/22/07	8/2/12, 77 FR 45949	Added.
26.11.17.07	Plantwide Applicability Limit (PAL)—General.	10/22/07	8/2/12, 77 FR 45949	Added.
26.11.17.08	Plantwide Applicability Limit (PAL)—Permits.	10/22/07	8/2/12, 77 FR 45949	Added.
26.11.17.09	Plantwide Applicability Limit (PAL)—Monitoring, Record Keeping, and Reporting.	10/22/07	8/2/12, 77 FR 45949	Added.
26.11.19 Volatile Organic Compounds From Specific Processes				
26.11.19.01	Definitions	6/5/95	9/2/97, 62 FR 46199	(c)(126) Note: On 5/13/1998 (63 FR 26462), EPA approved the revised definition of "major stationary source of VOC " with a State effective date of 5/8/1995 [(c)(128)].
26.11.19.02	Applicability, Determining Compliance, Reporting, and General Requirements.	3/5/12	1/25/13, 78 FR 5290	Amended sections .02D, .02E, .02G and .02I.
26.11.19.03	Automotive and Light-Duty Truck Coating.	9/22/97	11/5/98, 63 FR 59720	(c)(140).
26.11.19.04	Can Coating	8/1/88	11/3/92, 57 FR 49651	(C)(90)(i)(B)(12).
26.11.19.05	Coil Coating	8/1/88	11/3/92, 57 FR 49651	(C)(90)(i)(B)(12).
26.11.19.06	Large Appliance Coating	10/1/10	5/12/11, 76 FR 27610.	
26.11.19.07	Paper, Fabric, Film, and Foil Coating.	5/16/11	10/17/11, 76 FR 64022	Revisions to Section title and Sections .07A and .07C(3).
26.11.19.07-1	Control of VOC Emissions from Solid Resin Decorative Surface Manufacturing.	6/15/98	6/17/99 64 FR 32415	(c)(142).
26.11.19.07-2	Plastic Parts and Business Machines Coating.	5/16/11	10/17/11, 76 FR 64022	New Regulation.
26.11.19.08	Metal Furniture Coating	8/1/88	11/3/92, 57 FR 49651	(C)(90)(i)(B)(12).
26.11.19.09	Control of Volatile Organic Compounds (VOC) Emissions from Cold and Vapor Degreasing.	6/5/95	8/4/97 62 FR 41853	(c)(123).
26.11.19.10	Flexographic and Rotogravure Printing.	4/19/10	9/27/10 75 FR 59086	Revision to section .10B(2).
26.11.19.10-1	Flexible packaging printing	4/19/10	9/27/10, 75 FR 59086	New Regulation.
26.11.19.11	Lithographic and Letterpress Printing.	5/16/11	7/23/12 77 FR 43001	Sections .11A through .11E are revised; sections .11F through .11H are added.
26.11.19.12	Dry Cleaning Installations	9/22/97	9/2/98, 63 FR 46662	(c)(131).
26.11.19.13	Drum and Pall Coating	5/16/11	10/17/11 76 FR 64017	Revisions to Section title and Sections .13A, .13B, and .13C and addition of new Section .13D.
26.11.19.13-1	Aerospace Coating Operations	10/2/00, 10/15/ 01	11/7/01, 66 FR 56220	(c)(169).
26.11.19.13-2	Brake Shoe Coating Operations ...	8/24/98	6/17/99, 64 FR 32415	(c)(142).
26.11.19.13-3	Control of VOC Emissions from Structural Steel Coating Operations.	6/29/98	6/17/99, 64 FR 32415	(c)(142).

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP—
Continued

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
26.11.19.14	Manufacture of Synthesized Pharmaceutical Products.	5/8/91	11/29/94, 59 FR 60908	(c)(102)(i)(B)(14).
26.11.19.15	Paint, Resin, and Adhesive Manufacturing and Adhesive and Sealant Applications.	4/19/10	10/18/11, 76 FR 64237	Amendments to Sections .15A and .15C.
26.11.19.16	Control of VOC Equipment Leaks	8/19/91	9/7/94, 59 FR 46180	(c)(103)(i)(B)(9).
26.11.19.17	Control of Volatile Organic Compounds (VOC) Emissions from Yeast Manufacturing.	9/12/05	3/31/06, 71 FR 16237	
26.11.19.18	Control of Volatile Organic Compounds (VOC) Emissions from Screen Printing and Digital Imaging.	6/10/02	1/15/03, 68 FR 1972	(c)(177).
26.11.19.19	Control of Volatile Organic Compounds (VOC) Emissions from Expandable Polystyrene Operations.	10/2/00	5/7/01, 66 FR 22924	(c)(156).
26.11.19.21	Control of Volatile Organic Compounds (VOC) Emissions from Commercial Bakery Ovens.	7/3/95	10/15/97, 62 FR 53544	(c)(125)(i)(B)(4).
26.11.19.22	Control of Volatile Organic Compounds (VOC) Emissions from Vinegar Generators.	8/11/97	9/23/99, 64 FR 41445	(c)(137).
26.11.19.23	Control of VOC Emissions from Vehicle Refinishing.	4/16/12	9/26/12, 77 FR 59093	Entire regulation revised.
26.11.19.24	Control of VOC Emissions from Leather Coating.	8/11/97	9/23/99 64 FR 41445	(c)(137).
26.11.19.25	Control of Volatile Organic Compounds from Explosives and Propellant Manufacturing.	8/11/97	1/26/99, 64 FR 3852	(c)(141).
26.11.19.26	Control of Volatile Organic Compound Emissions from Reinforced Plastic Manufacturing.	8/11/97	8/19/99, 64 FR 45182	(c)(139).
26.11.19.27	Control of Volatile Organic Compounds from Marine Vessel Coating Operations.	10/20/97	9/5/01, 66 FR 46379	(c)(156).
26.11.19.27-1	Control of Volatile Organic Compounds from Pleasure Craft Coating Operations.	10/12/12	9/26/13, 78 FR 59240	Regulation Added.
26.11.19.28	Control of Volatile Organic Compounds from Bread and Snack Food Drying Operations.	10/2/00	5/7/01, 66 FR 22924	(c)(157).
26.11.19.29	Control of Volatile Organic Compounds from Distilled Spirits Facilities.	10/2/00, 10/15/01	11/7/01, 66 FR 56220	(c)(160).
26.11.19.30	Control of Volatile Organic Compounds from Chemical Production and Fluoropolymer Material Installations.	4/21/08	10/18/11, 76 FR 64237	Amendments to Sections .30A, .30B, .30C and .30E.
26.11.19.31	Control of Volatile Organic Compounds from Medical Device Manufacturing.	6/5/06	1/11/07, 72 FR 1289	
26.11.19.33	Control of Volatile Organic Compounds (VOCs) from Flat wood Paneling Coatings.	4/19/10	1/26/11, 76 FR 4534	New Regulation.
26.11.20 Mobile Sources				
26.11.20.02	Motor Vehicle Emission Control Devices.	8/1/88	11/3/92, 57 FR 49651	(c)(90)(i)(B)(13) [as 26.11.20.06].
26.11.20.03	Motor Vehicle Fuel Specifications	10/26/92	6/10/94, 59 FR 29957	(c)(101)(i)(B)(3).
26.11.20.04	National Low Emission Vehicle Program.	3/22/99	12/28/99, 64 FR 72564	(c)(146).

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP—
Continued

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
26.11.24 Stage II Vapor Recovery at Gasoline Dispensing Facilities				
26.11.24.01	Definitions	1/29/07	1/17/08, 73 FR 3187	(c)(178). (c)(178). (c)(178).
26.11.24.01-1	Incorporation by Reference	4/15/02	5/7/03, 68 FR 24363	
26.11.24.02	Applicability, Exemptions, and Effective Date.	4/15/02	5/7/03, 68 FR 24363	
26.11.24.03	General Requirements	4/15/02	5/7/03, 68 FR 24363	
26.11.24.04	Testing Requirements	2/28/05	5/8/06 71 FR 26688	
26.11.24.05	Inspection Requirements	2/15/93	6/9/94, 59 FR 29730	(c)(107).
26.11.24.05-1	Inspections by a Certified Inspector.	1/29/07	1/17/08, 73 FR 3187	Added Section.
26.11.24.06	Training Requirements for Operation and Maintenance of Approved Systems.	2/15/93	6/9/94, 59 FR 29730	(c)(107).
26.11.24.07	Record-Keeping and Reporting Requirements.	2/28/05	5/8/06, 71 FR 26688	
26.11.24.08	Instructional Signs	2/15/93	6/9/94, 59 FR 29730	(c)(107).
26.11.24.09	Sanctions	2/15/93	6/9/94, 59 FR 29730	(c)(107).
26.11.25 Control of Glass Melting Furnaces				
26.11.25.01	Definitions	10/5/98	10/19/05, 70 FR 60738	
26.11.25.02	Applicability and Exemptions	10/5/98	10/19/05, 70 FR 60738	
26.11.25.03	Visible Emissions from Glass Melting Furnaces.	10/5/98	10/19/05, 70 FR 60738	
26.11.25.04	Particulate Matter Emissions from Glass Melting Furnaces.	10/5/98	10/19/05, 70 FR 60738	
26.11.26 Conformity				
26.11.26.01	Purpose	6/30/08	9/26/11, 76 FR 59254	New Regulation.
26.11.26.02	Definitions	6/30/08	9/26/11, 76 FR 59254	Definitions added for transportation conformity; definitions for general conformity were approved at (c)(136).
26.11.26.03	Transportation Conformity	6/30/08	9/26/11, 76 FR 59254	New Regulation.
26.11.26.04	Transportation Conformity—Consultation in General.	6/30/08	9/26/11, 76 FR 59254	New Regulation.
26.11.26.05	Transportation Conformity—Interagency Consultation Requirements.	6/30/08	9/26/11, 76 FR 59254	New Regulation.
26.11.26.06	Transportation Conformity—Dispute Resolution.	6/30/08	9/26/11, 76 FR 59254	New Regulation.
26.11.26.07	Transportation Conformity—Public Consultation Procedures.	6/30/08	9/26/11, 76 FR 59254	New Regulation.
26.11.26.08	Transportation Conformity—Interagency Consultation.	6/30/08	9/26/11, 76 FR 59254	New Regulation.
26.11.26.09	General Conformity	6/30/08	9/26/11, 76 FR 59254	Formerly SIP regulation 26.11.26.03.
26.11.27 Emission Limitations for Power Plants				
26.11.27.01	Definitions	7/16/07	9/4/08, 73 FR 51599	Exceptions: Paragraphs .03B(7)(a)(ii) and .03D; the word "and" at the end of paragraph .03B(7)(a)(ii).
26.11.27.02	Applicability and Exceptions	7/16/07	9/4/08, 73 FR 51599	
26.11.27.03	General Requirements	7/16/07	9/4/08, 73 FR 51599	
26.11.27.05	Monitoring and Reporting Requirements.	7/16/07	9/4/08, 73 FR 51599	
26.11.27.06	Judicial Review of Penalty Waivers.	7/16/07	9/4/08, 73 FR 51599	

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP—
Continued

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
26.11.28 Clean Air Interstate Rule				
26.11.28.01	Definitions	6/16/08	10/30/09, 74 FR 56117	
26.11.28.02	Incorporation by Reference	6/16/08	10/30/09, 74 FR 56117	
26.11.28.03	Affected Units and General Requirements.	6/16/08	10/30/09, 74 FR 56117	
26.11.28.04	Requirements for New Affected Trading Units and NO _x Set Aside Pool.	6/16/08	10/30/09, 74 FR 56117	
26.11.28.05	NO _x Allowances for Renewable Energy Projects and Consumers of Electric Power.	6/16/08	10/30/09, 74 FR 56117	
26.11.28.06	NO _x Allowances To Be Distributed to Consumers of Electric Power.	6/16/08	10/30/09, 74 FR 56117	
26.11.28.07	Distribution of Unused NO _x Allowances in the Set Aside Pool.	6/16/08	10/30/09, 74 FR 56117	
26.11.28.08	Allocation of NO _x Allowances	6/16/08	10/30/09, 74 FR 56117	Annual and Ozone Season Allocations start in 2010 instead of 2009.
26.11.29 NO_x Reduction and Trading Program				
26.11.29.01	Definitions	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(1).
26.11.29.02	Incorporation by Reference	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(1).
26.11.29.03	Scope and Applicability	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(1).
26.11.29.04	General Requirements for Affected Trading Sources.	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(1).
26.11.29.05	NO _x Allowance Allocations	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(1).
26.11.29.06	Compliance Supplement Pool	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(1).
26.11.29.07	Allowance Banking	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(1).
26.11.29.08	Emission Monitoring	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(1).
26.11.29.09	Requirements for New Sources and Set-Aside Pool.	11/24/03	3/22/04 69 FR 13236	(c)(186)(i)(C)(1)-(5).
26.11.29.10	Reporting	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(1).
26.11.29.11	Record Keeping	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(1).
26.11.29.12	End-of-Season Reconciliation	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(1).
26.11.29.13	Compliance Certification	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(1).
26.11.29.14	Penalties	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(1).
26.11.29.15	Requirements for Affected Non-trading Sources.	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(1).
26.11.30 Policies and Procedures Relating to Maryland's NO_x Reduction and Trading Program				
26.11.30.01	Scope and Applicability	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(2).
26.11.30.02	Definitions	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(2).
26.11.30.03	Procedures Relating to Compliance Accounts and Overdraft Accounts.	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(2).
26.11.30.04	Procedures Relating to General Accounts.	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(2).
26.11.30.05	Allowance Banking	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(2).
26.11.30.06	Allowance Transfers	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(2).
26.11.30.07	Early Reductions	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(2).
26.11.30.08	Opt-In Procedures	5/1/00	1/10/01, 66 FR 1866	(c)(154)(i)(B)(2).
26.11.30.09	Allocation of Allowances	6/19/06	11/03/06, 71 FR 64647	New column for 2008 allocations.
26.11.32 Control of Emissions of Volatile Organic Compounds From Consumer Products				
26.11.32.01	Applicability and Exemptions	6/18/07	12/10/07 72 FR 69621	
26.11.32.02	Incorporation by Reference	6/18/07	12/10/07 72 FR 69621	
26.11.32.03	Definitions	6/18/07	12/10/07 72 FR 69621	
26.11.32.04	Standards—General	6/18/07	12/10/07 72 FR 69621	
26.11.32.05	Standards—Requirements for Charcoal Lighter Materials.	8/18/03	12/09/03 68 FR 68523	(c)(185).
26.11.32.06	Standards—Requirements for Aerosol Adhesives.	6/18/07	12/10/07 72 FR 69621	

Environmental Protection Agency

§ 52.1070

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP—
Continued

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
26.11.32.07	Standards—Requirements for Floor Wax Strippers.	8/18/03	12/09/03 68 FR 68523	(c)(185).
26.11.32.08	Requirements for Contact Adhesives, Electronic Cleaners, Footwear, or Leather Care Products, and General Purpose Cleaners.	6/18/07	12/10/07 72 FR 69621	New Regulation.
26.11.32.09	Requirements for Adhesive Removers, Electrical Cleaners, and Graffiti Removers.	6/18/07	12/10/07 72 FR 69621	New Regulation.
26.11.32.10	Requirements for Solid Air Fresheners and Toilet and Urinal Care Products.	6/18/07	12/10/07 72 FR 69621	New Regulation.
26.11.32.11	Innovative Products—CARB Exemption.	6/18/07	12/10/07 72 FR 69621	Recodification of existing Regulation .08.
26.11.32.12	Innovative Products—Department Exemption.	6/18/07	12/10/07 72 FR 69621	
26.11.32.13	Administrative Requirements	6/18/07	12/10/07 72 FR 69621	Recodification of existing Regulation .10; Amended.
26.11.32.14	Reporting Requirements	6/18/07	12/10/07 72 FR 69621	Recodification of existing Regulation .11; Amended.
26.11.32.15	Variations	6/18/07	12/10/07 72 FR 69621	Recodification of existing Regulation .12; Amended.
26.11.32.16	Test Methods	6/18/07	12/10/07 72 FR 69621	Recodification of existing Regulation .13; Amended.
26.11.32.17	Alternative Control Plan (ACP)	6/18/07	12/10/07 72 FR 69621	Recodification of existing Regulation .14; Amended.
26.11.32.18	Approval of an ACP Application ...	6/18/07	12/10/07 72 FR 69621	Recodification of existing Regulation .15; Amended.
26.11.32.19	Record Keeping and Availability of Requested Information.	6/18/07	12/10/07 72 FR 69621	Recodification of existing Regulation .16.
26.11.32.20	Violations	6/18/07	12/10/07 72 FR 69621	Recodification of existing Regulation .17.
26.11.32.21	Surplus Reduction and Surplus Trading.	6/18/07	12/10/07 72 FR 69621	Recodification of existing Regulation .18; Amended.
26.11.32.22	Limited-use surplus reduction credits for early formulations of ACP Products.	6/18/07	12/10/07 72 FR 69621	Recodification of existing Regulation .19; Amended.
26.11.32.23	Reconciliation of Shortfalls	6/18/07	12/10/07 72 FR 69621	Recodification of existing Regulation .20; Amended.
26.11.32.24	Modifications to an ACP	6/18/07	12/10/07 72 FR 69621	Recodification of existing Regulation .21; Amended.
26.11.32.25	Cancellation of an ACP	6/18/07	12/10/07 72 FR 69621	Recodification of existing Regulation .22; Amended.
26.11.32.26	Transfer of an ACP	6/18/07	12/10/07 72 FR 69621	Recodification of existing Regulation .23

26.11.33 Architectural Coatings

26.11.33.01	Applicability and Exemptions	3/29/04	5/12/05, 70 FR 24979	
26.11.33.02	Test Methods—Incorporation by Reference.	3/29/04	5/12/05, 70 FR 24979	
26.11.33.03	Definitions	3/29/04	5/12/05, 70 FR 24979	
26.11.33.04	General Standard—VOC Content Limits.	3/29/04	5/12/05, 70 FR 24979	
26.11.33.05	VOC Content Limits	3/29/04	5/12/05, 70 FR 24979	
26.11.33.06	Most Restrictive VOC Limit	2/28/05	10/19/05, 70 FR 60740	Addition of sections B(15) through B(19).
26.11.33.07	Painting Restrictions	3/29/04	5/12/05, 70 FR 24979	
26.11.33.08	Thinning	3/29/04	5/12/05, 70 FR 24979	
26.11.33.09	Rust Preventive Coatings	3/29/04	5/12/05, 70 FR 24979	
26.11.33.10	Coatings Not Listed in Regulation .05.	2/28/05	10/19/05, 70 FR 60740	
26.11.33.11	Lacquers	3/29/04	5/12/05, 70 FR 24979	
26.11.33.12	Container Labeling Requirements	2/28/05	10/19/05, 70 FR 60740	Deleted section K.
26.11.33.13	Record Keeping Requirements	2/28/05	10/19/05, 70 FR 60740	

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP—
Continued

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
26.11.33.14	Compliance Provisions and Test Methods.	3/29/04	5/12/05, 70 FR 24979	
26.11.34 Low Emissions Vehicle Program				
26.11.34.01	Purpose	12/17/07	6/11/13; 78 FR 34911	Update to incorporate by reference California's Advanced Clean Car Program rules, with exception of Title 13, California Code of Regulations (CCR), Division 3, Chapter 2, Article 5, § 2030.
26.11.34.02 with exception.	Incorporation by Reference	03/04/13	07/09/14, 79 FR 38791	
26.11.34.03	Applicability and Exemptions	12/17/07	6/11/13; 78 FR 34911	
26.11.34.04	Definitions	12/17/07	6/11/13; 78 FR 34911	
26.11.34.05	Emissions Requirements	12/17/07	6/11/13; 78 FR 34911	
26.11.34.06	Fleet Average NMOG Requirements.	12/17/07	6/11/13; 78 FR 34911	
26.11.34.07	Initial NMOG Credit Account Balances.	12/17/07	6/11/13; 78 FR 34911	
26.11.34.08	Fleet Average Greenhouse Gas Requirements.	12/17/07	6/11/13; 78 FR 34911	
26.11.34.09	Zero Emission Vehicle (ZEV) Requirements.	12/17/07	6/11/13; 78 FR 34911	
26.11.34.10	Initial ZEV Credit Account Balances.	12/17/07	6/11/13; 78 FR 34911	
26.11.34.11	Vehicle Testing	12/17/07	6/11/13; 78 FR 34911	
26.11.34.12	Warranty	12/17/07	6/11/13; 78 FR 34911	
26.11.34.13	Manufacturer Compliance Demonstration.	12/17/07	6/11/13; 78 FR 34911	
26.11.34.14	Enforcement	12/17/07	6/11/13; 78 FR 34911	
26.11.35 Volatile Organic Compounds from Adhesives and Sealants				
26.11.35.01	Applicability and Exemptions	4/21/08 6/1/09	10/18/11, 76 FR 64237	New Section.
26.11.35.02	Incorporation by Reference	4/21/08	10/18/11, 76 FR 64237	New Section.
26.11.35.03	Definitions	4/21/08	10/18/11, 76 FR 64237	New Section.
26.11.35.04	Standards	4/21/08	10/18/11, 76 FR 64237	New Section.
26.11.35.05	Administrative Requirements	4/21/08	10/18/11, 76 FR 64237	New Section.
26.11.35.06	Compliance Procedures and Test Methods.	4/21/08	10/18/11, 76 FR 64237	New Section.
26.11.35.07	Container Labeling	4/21/08	10/18/11, 76 FR 64237	New Section.
11.14.08 Vehicle Emissions Inspection Program				
11.14.08.01	Title	1/02/95	10/29/99, 64 FR 58340	(c)(144).
11.14.08.02	Definitions	1/02/95, 10/19/ 98	10/29/99, 64 FR 58340	(c)(144).
11.14.08.03	Applicability	6/10/02	1/16/03, 68 FR 2208	(c)(179).
11.14.08.04	Exemptions	1/02/95	10/29/99, 64 FR 58340	(c)(144).
11.14.08.05	Schedule of the Program	1/02/95, 12/16/ 96	10/29/99, 64 FR 58340	(c)(144).
11.14.08.06	Certificates	8/10/02	1/16/03, 68 FR 2208	(c)(179).
11.14.08.07	Extensions	1/02/95, 10/19/ 98	10/29/99, 64 FR 58340	(c)(144).
11.14.08.08	Enforcement	1/02/95	10/29/99, 64 FR 58340	(c)(144).
11.14.08.09	Inspection Standards	6/10/02	1/16/03, 68 FR 2208	(c)(179).
11.14.08.10	General Requirements for Inspection and Preparation for Inspection.	1/02/95, 12/16/ 96, 10/19/ 98	10/29/99, 64 FR 58340	(c)(144).
11.14.08.11	Idle Exhaust Emissions Test and Equipment Checks.	10/18/98	10/29/99, 64 FR 58340	(c)(144).

Environmental Protection Agency

§ 52.1070

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP—
Continued

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
11.14.08.11-1	Transient Exhaust Emissions Test and Evaporative Purge Test Sequence.	12/16/96, 10/19/98	10/29/99, 64 FR 58340	(c)(144).
11.14.08.12	Evaporative Integrity Test, Gas Cap Leak Test, and On-Board Diagnostics Interrogation Procedures.	6/10/02	1/16/03, 68 FR 2208	(c)(179).
11.14.08.13	Failed Vehicle and Reinspection Procedures.	1/02/95	10/29/99, 64 FR 58340	(c)(144).
11.14.08.14	Dynamometer System Specifications.	1/02/95	10/29/99, 64 FR 58340	(c)(144).
11.14.08.15	Constant Volume Sampler, Analysis System, and Inspector Control Specifications.	1/02/95, 10/19/98	10/29/99, 64 FR 58340	(c)(144).
11.14.08.16	Evaporative Test Equipment, Gas Cap Leak Test Equipment, and On-Board Diagnostics Interrogation Equipment Specifications.	6/10/02	1/16/03, 68 FR 2208	(c)(179).
11.14.08.17	Quality Assurance and Maintenance—General Requirements.	1/02/95	10/29/99, 64 FR 58340	(c)(144).
11.14.08.18	Test Assurance Procedures	1/02/95	10/29/99, 64 FR 58340	(c)(144).
11.14.08.19	Dynamometer Periodic Quality Assurance Checks.	1/02/95	10/29/99, 64 FR 58340	(c)(144).
11.14.08.20	Constant Volume Sampler Periodic Quality Assurance Checks.	1/02/95	10/29/99, 64 FR 58340	(c)(144).
11.14.08.21	Analysis System Periodic Quality Assurance Checks.	1/02/95	10/29/99, 64 FR 58340	(c)(144).
11.14.08.22	Evaporative Test Equipment, Gas Cap Leak Test Equipment and On-Board Diagnostics Interrogation Equipment Periodic Quality Assurance Checks.	1/2/95 10/19/98	10/29/99 64 FR 58340	(c)(144).
11.14.08.23	Overall System Performance Quality Assurance.	1/02/95	10/29/99, 64 FR 58340	(c)(144).
11.14.08.24	Control Charts	1/02/95	10/29/99, 64 FR 58340	(c)(144).
11.14.08.25	Gas Specifications	1/02/95	10/29/99, 64 FR 58340	(c)(144).
11.14.08.26	Vehicle Emissions Inspection Station.	1/02/95	10/29/99, 64 FR 58340	(c)(144).
11.14.08.27	Technician's Vehicle Report	1/02/95, 10/19/98	10/29/99, 64 FR 58340	(c)(144).
11.14.08.28	Feedback Reports	1/02/95, 10/19/98	10/29/99, 64 FR 58340	(c)(144).
11.14.08.29	Certified Emissions Technician	1/02/95, 12/16/96	10/29/99, 64 FR 58340	(c)(144).
11.14.08.30	Certified Emissions Repair Facility	1/02/95, 12/16/96	10/29/99, 64 FR 58340	(c)(144).
11.14.08.31	On-Highway Emissions Test	1/02/95	10/29/99, 64 FR 58340	(c)(144).
11.14.08.32	Fleet Inspection Station	1/02/95, 12/16/96, 10/19/98	10/29/99, 64 FR 58340	(c)(144).
11.14.08.33	Fleet Inspection Standards	1/02/95	10/29/99, 64 FR 58340	(c)(144).
11.14.08.34	Fleet Inspection and Reinspection Methods.	1/02/95	10/29/99, 64 FR 58340	(c)(144).
11.14.08.35	Fleet Equipment and Quality Assurance Requirements.	1/02/95	10/29/99, 64 FR 58340	(c)(144).
11.14.08.36	Fleet Personnel Requirements	1/02/95	10/29/99, 64 FR 58340	(c)(144).
11.14.08.37	Fleet Calibration Gas Specifications and Standard Reference Materials.	1/02/95	10/29/99, 64 FR 58340	(c)(144).
11.14.08.38	Fleet Recordkeeping Requirements.	1/02/95	10/29/99, 64 FR 58340	(c)(144).
11.14.08.39	Fleet Fees	1/02/95	10/29/99, 64 FR 58340	(c)(144).

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP—
Continued

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
11.14.08.40	Fleet License Suspension and Revocation.	1/02/95	10/29/99, 64 FR 58340	(c)(144).
11.14.08.41	Audits	1/02/95	10/29/99, 64 FR 58340	(c)(144).
11.14.08.42	Fleet Inspection After 1998	1/02/95, 2/16/96, 10/19/98	10/29/99, 64 FR 58340	(c)(144).
03.03.05 Motor Fuel Inspection [Contingency SIP Measure]				
03.03.05.01	Definitions	12/18/95	1/30/96, 61 FR 2982	(c)(101)(i)(B)(4); Approved as a contingency SIP measure as part of the CO Maintenance Plans for Baltimore and DC. [(c)(117) and (c)(118)].
03.03.05.01-1	Standard Specifications for Gasoline.	12/18/95	1/30/96, 61 FR 2982	
03.03.05.02-1	Other Motor Vehicle Fuels	10/26/92	6/10/94, 58 FR 29957	
03.03.05.05	Labeling of Pumps	12/18/95	1/30/96, 61 FR 2982	
03.03.05.08	Samples and Test Tolerance	10/26/92	6/10/94, 58 FR 29957	
03.03.05.15	Commingled Products	10/26/92	6/10/94, 58 FR 29957	
03.03.06 Emissions Control Compliance [Contingency SIP Measure]				
03.03.06.01	Definitions	12/18/95	1/30/96, 61 FR 2982	(c)(101)(i)(B)(5); Approved as a contingency SIP measure as part of the CO Maintenance Plans for Baltimore and DC. [(c)(117) and (c)(118)].
03.03.06.02	Vapor Pressure Determination	10/26/92	6/10/94, 58 FR 29957	
03.03.06.03	Oxygen Content Determination	12/18/95	1/30/96, 61 FR 2982	
03.03.06.04	Registration	10/26/92	6/10/94, 58 FR 29957	
03.03.06.05	Record Keeping	10/26/92	6/10/94, 58 FR 29957	
03.03.06.06	Transfer Documentation	12/18/95	1/30/96, 61 FR 2982	
20.79.01 Applications Concerning the Construction or Modification of Generating Stations and Overhead Transmission Lines—General				
20.79.01.01A, .01C, and .01D.	Scope	12/28/09	2/10/12, 77 FR 6963	Added; limited approval.
20.79.01.02A and .02B(1) through (13), (14)(a), (15), (16), and (18) through (20).	Definitions	12/28/09	2/10/12, 77 FR 6963	Added; limited approval.
20.79.01.06	Modifications to Facilities at a Power Plant.	12/28/09	2/10/12, 77 FR 6963	Added; limited approval.
20.79.02 Applications Concerning the Construction or Modification of Generating Stations and Overhead Transmission Lines—Administrative Provisions				
20.79.02.01	Form of Application	2/10/97	2/10/12, 77 FR 6963	Added; limited approval.
20.79.02.02	Distribution of Application	2/10/97; 11/8/04	2/10/12, 77 FR 6963	Added; limited approval.
20.79.02.03	Proceedings on the Application	2/10/97; 11/8/04	2/10/12, 77 FR 6963	Added; Limited approval.
20.79.03 Applications Concerning the Construction or Modification of Generating Stations and Overhead Transmission Lines—Details of Filing Requirements—Generating Stations				
20.79.03.01	Description of Generating Station	2/10/97; 11/8/04	2/10/12, 77 FR 6963	Added; limited approval.
20.79.03.02A and .02B(1) and (2).	Environmental Information	2/10/97; 11/8/04	2/10/12, 77 FR 6963	Added; limited approval.

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP—
Continued

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
--	---------------	----------------------	-------------------	---

TM Technical Memoranda

TM01-01 [Except Methods 1004A through E]. Annotated Code of Maryland citation	Test Methods and Equipment Specifications for Stationary Sources. Title/subject	11/2/98 State effective date	9/7/01, 66 FR 46727 EPA approval date	(c)(153)(i)(D)(5) (Supplement 3 is added). Additional explanation/citation at 40 CFR 52.1100
--	--	---------------------------------	--	---

Public Utility Companies Article of the Annotated Code of Maryland

Section 7-205	Electric Companies—Modification of Power Plant.	7/01/06	2/10/12, 77 FR 6963	Added; limited approval.
Section 7-207(a), (b)(1), (c), (d), and (e).	Generating Stations or Transmission Lines—General Certification Procedure.	7/01/07	2/10/12, 77 FR 6963	Added; limited approval.
Section 7-207.1(a) and (e).	Generating Stations or Transmission Lines—Onsite Generated Electricity; Approval Process.	7/01/07	2/10/12, 77 FR 6963	Added; limited approval.
Section 7-208 (a)(1), (b) through (f), and (h)(2).	Generating Stations or Transmission Lines—Joint Construction of Station and Associated Lines.	7/01/01	2/10/12, 77 FR 6963	Added; limited approval.

State Government Article of the Annotated Code of Maryland

Section 15-102(a)(1), (a)(2)(bb), (a)(2)(ff), and (a)(2)(ll).	Definitions	10/1/12	12/6/13, 78 FR 73442	Added; addresses CAA section 128.
Section 15-103(a), (b)(1) and (b)(2), and (f).	Designation of Individuals as public officials.	10/1/95	12/6/13, 78 FR 73442	Added; addresses CAA section 128.
Section 15-601(a)	Individuals required to file statement.	10/1/04	12/6/13, 78 FR 73442	Added; addresses CAA section 128.
Section 15-602(a)(1) through (a)(5).	Financial disclosure statement—Filing requirements.	10/1/08	12/6/13, 78 FR 73442	Added; addresses CAA section 128.
Section 15-607(a) through (j).	Content of statements	10/1/04	12/6/13, 78 FR 73442	Added; addresses CAA section 128.
Section 15-608(a) through (c).	Interests attributable to individual filing statement.	10/1/95	12/6/13, 78 FR 73442	Added; addresses CAA section 128.

(d) EPA approved state source-specific requirements.

Name of source	Permit number/type	State effective date	EPA approval date	Additional explanation
GenOn Chalk Point Generating Station.	The 2011 Consent Decree for Chalk Point.	3/10/11	5/4/12, 77 FR 26438.	Docket No. 52.1070(d). The SIP approval includes specific provisions of the 2011 Consent Decree for which the State of Maryland requested approval on October 12, 2011.
Northeast Maryland Waste Disposal Authority.	Secretarial Order	11/20/81	7/7/82, 47 FR 29531.	52.1100(c)(65) (Wheelabrator-Frye, Inc.).
Northeast Maryland Waste Disposal Authority and Wheelabrator-Frye, Inc. and the Mayor and City Council of Baltimore and BEDCO Development Corp.	Secretarial Order	2/25/83	8/24/83, 45 FR 55179.	52.1100(c)(70) (Shutdown of landfill for offsets).
Westvaco Corp	Consent Order	9/8/83; Rev. 1/26/84.	12/20/84, 49 FR 49457.	52.1100(c)(74).

Name of source	Permit number/type	State effective date	EPA approval date	Additional explanation
Potomac Electric Power Company (PEPCO).	Administrative Consent Order.	9/13/99	12/15/00, 65 FR 78416.	52.1100(c)(151).
Thomas Manufacturing Corp ...	Consent Decree ...	2/15/01	11/15/01, 66 FR 57395.	52.1100(c)(167).
Constellation Power Source Generation, Inc.—Brandon Shores Units #1 & 2; Gould Street Unit #3; H.A. Wagner Units #1, 2, 3 & 4; C.P. Crane Units #1 & 3; and Riverside Unit #4.	Consent Order and NO _x RACT Averaging Plan Proposal.	4/25/01	2/27/02, 67 FR 8897.	52.1100(c)(168).
Kaydon Ring and Seal, Inc	Consent Order	3/5/04	8/31/04, 69 FR 53002.	(c)(190).
Perdue Farms, Inc	Consent Order	2/1/05	1/11/07, 72 FR 1291.	52.1070(d)(1).

(e) EPA-approved nonregulatory and quasi-regulatory material.

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
Base Year Emissions Inventory.	Metropolitan Baltimore Ozone Nonattainment Area 1990.	9/20/95	10/30/95, 60 FR 55321	52.1075(a) CO.
1990 Base Year Emissions Inventory.	Metropolitan Washington Ozone Nonattainment Area.	3/21/94	1/30/96, 61 FR 2931	52.1075(b) CO.
1990 Base Year Emissions Inventory.	All ozone nonattainment areas.	10/12/95		
1990 Base Year Emissions Inventory.	Kent & Queen Anne's Counties.	3/21/94	9/27/96, 61 FR 50715 ..	52.1075(c) VOC, NO _x , CO.
1990 Base Year Emissions Inventory.	Metropolitan Washington Ozone Nonattainment Area.	3/21/94	9/27/96, 61 FR 50715 ..	52.1075(d) VOC, NO _x , CO.
1990 Base Year Emissions Inventory.	Metropolitan Washington Ozone Nonattainment Area.	3/21/94	4/23/97, 62 FR 19676 ..	52.1075(e) VOC, NO _x , CO.
1990 Base Year Emissions Inventory.	Metropolitan Washington Ozone Nonattainment Area.	12/24/97	7/8/98, 63 FR 36854	52.1075(f) VOC, NO _x .
1990 Base Year Emissions Inventory.	Metropolitan Baltimore Ozone Nonattainment Area.	12/24/97	2/3/00, 65 FR 5245	52.1075(g) VOC, NO _x .
1990 Base Year Emissions Inventory.	Philadelphia-Wilmington-Trenton Ozone Nonattainment Area (Cecil County).	12/24/97, 4/29/98, 12/21/99, 12/28/00.	2/3/00, 65 FR 5252, 9/19/01, 66 FR 48209.	52.1075(h) VOC, NO _x .
15% Rate of Progress Plan.	Philadelphia-Wilmington-Trenton Ozone Nonattainment Area (Cecil County).	7/12/95, #95-20	7/29/97, 62 FR 40457 ..	52.1076(a).
Stage II Vapor Recovery Comparability Plan.	Western Maryland & Eastern Shore Counties.	11/5/97	12/9/98, 63 FR 87780 ..	52.1076(b).
15% Rate of Progress Plan.	Metropolitan Baltimore Ozone Nonattainment Area.	10/7/98	2/3/00, 65 FR 5245	52.1076(c).
15% Rate of Progress Plan.	Metropolitan Washington Ozone Nonattainment Area.	5/5/98	7/19/00, 65 FR 44686 ..	52.1076(d).
Post-1996 Rate of Progress Plan & contingency measures.	Philadelphia-Wilmington-Trenton Ozone Nonattainment Area (Cecil County).	12/24/97, 4/24/98	2/3/00, 65 FR 5252	52.1076(f).
Ozone Attainment Plan	Philadelphia-Wilmington-Trenton Ozone Nonattainment Area (Cecil County).	8/18/98, 12/21/99	9/19/01, 66 FR 44809.	
		12/28/00, 3/8/04	4/15/04, 69 FR 19939 ..	52.1076(f)(3).
		4/29/98, 8/18/98, 12/21/99, 12/28/00, 8/31/01.	10/29/01, 66 FR 54578	52.1076(h).
		9/2/03	10/27/03, 68 FR 61103.	

Environmental Protection Agency

§ 52.1070

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
Transportation Conformity Budgets.	Philadelphia-Wilmington-Trenton Ozone Nonattainment Area (Cecl County).	4/29/98, 8/18/98, 12/21/99, 12/28/00.	10/29/01, 66 FR 54578	52.1076(l).
Post-1996 Rate of Progress Plan & contingency measures.	Metropolitan Baltimore Ozone Nonattainment Area.	12/24/97, 4/24/98, 8/18/98, 12/21/99, 12/28/00.	9/26/01, 66 FR 49108 ..	52.1076(j).
Ozone Attainment Plan	Metropolitan Baltimore Ozone Nonattainment Area.	4/29/98, 8/18/98, 12/21/99, 12/28/00, 8/31/01.	10/30/01, 66 FR 54666	52.1076(k).
Mobile budgets	Metropolitan Baltimore Ozone Nonattainment Area.	9/2/03	10/27/03, 68 FR 61103	52.1076(k).
		8/31/01	10/30/01, 66 FR 54666	52.1076(l).
Mobile budgets (2005)	Metropolitan Baltimore Ozone Nonattainment Area.	9/2/03	10/27/03, 68 FR 61103.	52.1076(m).
	Philadelphia-Wilmington-Trenton Ozone Nonattainment Area (Cecl County).	9/2/03	10/27/03, 88 FR 61103	
Mobile budgets (2005 Rate of Progress Plan).	Metropolitan Baltimore Ozone Nonattainment Area.	11/3/03	2/13/04, 69 FR 7133	52.1076(n).
Extension for incorporation of the on-board diagnostics (OBD) testing program into the Maryland I/M SIP.	All ozone nonattainment areas.	7/9/02	1/16/03, 68 FR 2208	52.1078(b).
Photochemical Assessment Monitoring Stations (PAMS) Program.	Metropolitan Baltimore and Metropolitan Washington Ozone Nonattainment Areas.	3/24/94	9/11/95, 60 FR 47081 ..	52.1080.
Consultation with Local Officials (CAA Sections 121 & 127).	All nonattainment & PSD areas.	10/8/81	4/8/82, 47 FR 15140	52.1100(c)(63).
Lead (Pb) SIP	City of Baltimore	10/23/80	2/23/82, 47 FR 7835	52.1100(c)(60), (61).
TM#90-01—"Continuous Emission Monitoring Policies and Procedures"—October 1990.	Statewide	9/18/81	2/28/86, 61 FR 7418	52.1100(c)(106); approved into SIP as "additional material", but not IBR'd.
Carbon Monoxide Maintenance Plan.	City of Baltimore—Regional Planning District 118.	9/20/95	10/31/95 60 FR 55321	52.1100(c)(117).
		7/15/04	4/04/05 70 FR 16958 ...	Revised Carbon Monoxide Maintenance Plan Base Year Emissions Inventory using MOBILE6.
		7/15/04		
Carbon Monoxide Maintenance Plan.	Montgomery County Election Districts 4, 7, and 13; Prince Georges County Election Districts 2, 6, 12, 16, 17, and 18.	10/12/95	1/30/96 61 FR 2931	52.1100(c)(118).
		3/3/04	4/04/05 70 FR 16958 ...	Revised Carbon Monoxide Maintenance Plan Base Year Emissions Inventory using MOBILE6.
Ozone Maintenance Plan.	Kent and Queen Anne's Counties.	2/4/04	10/21/04, 69 FR 61766	52.1100(c)(187); SIP effective date is 11/22/04.
1996-1999 Rate-of-Progress Plan SIP and the Transportation Control Measures (TCMs) in Appendix H.	Washington DC 1-hour ozone nonattainment area.	12/20/97, 5/20/99	6/16/05, 70 FR 25688 ..	Only the TCMs in Appendix H of the 5/20/1999 revision. 1999 motor vehicle emissions budgets of 128.5 tons per day (tpy) of VOC and 196.4 tpy of NOx.

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
1990 Base Year Inventory Revisions.	Washington DC 1-hour ozone nonattainment area.	9/2/03, 2/24/04	5/16/05, 70 FR 25688 ..	
1999-2005 Rate-of-Progress Plan SIP Revision and the Transportation Control Measures (TCMs) in Appendix J.	Washington DC 1-hour ozone nonattainment area.	9/2/03, 2/24/04	5/16/05, 70 FR 25688 ..	Only the TCMs in Appendix J of the 2/24/2004 revision 2002 motor vehicle emissions budgets (MVEBs) of 125.2 tons per day (tpy) for VOC and 290.3 tpy of NO _x , and, 2005 MVEBs of 97.4 tpy for VOC and 234.7 tpy of NO _x .
VMT Offset SIP Revision.	Washington DC 1-hour ozone nonattainment area.	9/2/03, 2/24/04	5/16/05, 70 FR 25688.	
Contingency Measure Plan.	Washington, DC Area ..	9/2/03, 2/24/04	5/16/05, 70 FR 25688.	
1-hour Ozone Modeled Demonstration of Attainment.	Washington DC 1-hour ozone nonattainment area.	9/2/03, 2/24/04	5/16/05, 70 FR 25688.	
Attainment Demonstration and Early Action Plan for the Washington County Ozone Early Action Compact Area.	Washington County	12/20/04, 2/28/05	8/17/05, 70 FR 48283.	
1-Hour Ozone Attainment Plan.	Washington DC 1-hour ozone nonattainment area.	9/2/03 2/24/04	11/16/05 70 FR 69440.	
8-Hour Ozone Maintenance Plan for the Kent and Queen Anne's Area.	Kent and Queen Anne's Counties.	5/2/06 5/19/06	12/22/06 71 FR 76920.	
Reasonable Further Progress Plan (RFP), Reasonably Available Control Measures, and Contingency Measures.	Baltimore 1997 8-hour ozone moderate nonattainment area.	6/4/07	6/4/10, 75 FR 31709.	
2002 Base Year Inventory for VOC, NO _x , and CO.	Baltimore 1997 8-hour ozone moderate nonattainment area.	6/4/07	6/4/10, 75 FR 31709.	
2008 RFP Transportation Conformity Budgets.	Baltimore 1997 8-hour ozone moderate nonattainment area.	6/4/07	6/4/10, 75 FR 31709.	
Reasonable Further Progress Plan (RFP), Reasonably Available Control Measures, and Contingency Measures.	Maryland portion of the Philadelphia 1997 8-hour ozone moderate nonattainment area.	6/4/07	6/11/10, 75 FR 33172.	
2002 Base Year Inventory for VOC, NO _x , and CO.	Maryland portion of the Philadelphia 1997 8-hour ozone moderate nonattainment area.	6/4/07	6/11/10, 75 FR 33172.	
2008 RFP Transportation Conformity Budgets.	Maryland portion of the Philadelphia 1997 8-hour ozone moderate nonattainment area.	6/4/07	6/11/10, 75 FR 33172.	
Reasonable Further Progress Plan (RFP), Reasonably Available Control Measures, and Contingency Measures.	Washington DC-MD-VA 1997 8-hour ozone moderate nonattainment area.	6/12/07	9/20/11, 76 FR 58116..	
2002 Base Year Inventory for VOC, NO _x , and CO.	Washington DC-MD-VA 1997 8-hour ozone moderate nonattainment area.	6/12/07	9/20/11, 76 FR 58116..	

Environmental Protection Agency

§ 52.1070

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
2008 RFP Transportation Conformity Budgets.	Washington DC-MD-VA 1997 8-hour ozone moderate nonattainment area.	6/12/07	9/20/11, 76 FR 58116.	
Section 110(a)(2) infrastructure Requirements for the 1997 8-Hour Ozone NAAQS.	Statewide	7/27/07, 11/30/07,	11/25/11, 76 FR 72624	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
		7/31/09, 8/23/11	8/2/12, 77 FR 45949	This action addresses the following CAA elements or portions thereof: 110(a)(2)(C), (D)(i)(II), and (J).
Section 110(a)(2) Infrastructure Requirements for the 1997 PM _{2.5} NAAQS.	Statewide	4/3/08, 4/16/10	11/25/11, 76 FR 72624	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
		7/31/09, 8/23/11	8/2/12, 77 FR 45949	This action addresses the following CAA elements or portions thereof: 110(a)(2)(C), (D)(i)(II), and (J).
Section 110(a)(2) Infrastructure Requirements for the 2006 PM _{2.5} NAAQS.	Statewide	4/16/10, 7/21/10	11/25/11, 76 FR 72624	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
		7/31/09, 8/23/11	8/2/12, 77 FR 45949	This action addresses the following CAA elements or portions thereof: 110(a)(2)(C), (D)(i)(II), and (J).
RACT under the 1997 8-hour ozone NAAQS.	Statewide	10/17/11	7/13/12, 77 FR 41278.	
Maryland Regional Haze Plan.	Statewide	2/13/12	7/6/2012, 77 FR 33938.	
2002 Base Year Emissions Inventory for the 1997 fine particulate matter (PM _{2.5}) standard.	Maryland portion of the Washington DC-MD-VA 1997 PM _{2.5} nonattainment area.	4/3/08	10/10/12, 77 FR 61513	§ 52.1075(l)
Attainment Demonstration for the 1997 8-Hour Ozone National Ambient Air Quality Standard and Its Associated Motor Vehicle Emissions Budgets.	Maryland-Philadelphia-Wilmington-Atlantic City Moderate Nonattainment Area.	06/04/07	10/29/12, 77 FR 65488.	
2002 Base Year Emissions Inventory for the 1997 fine particulate matter (PM _{2.5}) standard.	Washington County, Maryland 1997 PM _{2.5} nonattainment area.	6/8/08	12/7/12, 77 FR 72966 ..	§ 52.1075(m)
2002 Base Year Emissions Inventory for the 1997 fine particulate matter (PM _{2.5}) standard.	Baltimore, Maryland 1997 PM _{2.5} nonattainment area.	6/8/08	12/10/12, 77 FR 73313	§ 52.1075(n)

§ 52.1070, Nt.

40 CFR Ch. I (7-1-15 Edition)

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
Section 110(a)(2) Infrastructure Requirements for the 2010 Nitrogen Dioxide NAAQS.	Statewide	8/14/2013	7/14/2014, 79 FR 40665.	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M).
Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS.	Statewide	1/3/2013 8/14/2013	7/16/2014, 79 FR 41437.	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L) and (M)
Maintenance plan for the Maryland Portion of the Washington, DC-MD-VA Nonattainment Area for the 1997 annual fine particulate matter (PM _{2.5}) National Ambient Air Quality Standard.	Statewide	07/10/13 07/26/13	10/6/14, 79 FR 60084 ..	See § 52.1061(d)
Infrastructure Requirements for the 2008 Ozone NAAQS.	Statewide	12/27/12	10/16/14, 79 FR 62018	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(I), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M)
1997 Annual fine particulate (PM _{2.5}) Maintenance Plan for the Baltimore, MD Area.	Baltimore, MD 1997 annual PM _{2.5} nonattainment area.	12/12/13	12/16/14, 79 FR 75033	See § 52.2526(k) and § 52.2531(h).
1997 Annual fine particulate (PM _{2.5}) Maintenance Plan for the Maryland portion of the Martinsburg WV-Hagerstown, MD Area.	Washington County	12/12/13	12/16/14, 79 FR 75037	See § 52.2526(k) and § 52.2531(h).
Attainment Demonstration Contingency Measure Plan.	Washington, DC-MD-VA 1997 8-Hour Ozone Nonattainment Area.	June 4, 2007	4/10/15, 80 FR 19218 ..	2010 motor vehicle emissions budgets of 144.3 tons per day (tpd) NO _x .
8-hour Ozone Modeled Demonstration of Attainment and Attainment Plan for the 1997 ozone national ambient air quality standards.	Washington, DC-MD-VA 1997 8-Hour Ozone Nonattainment Area.	June 4, 2007	4/10/15, 80 FR 19218 ..	2009 motor vehicle emissions budgets of 66.5 tons per day (tpd) for VOC and 146.1 tpd of NO _x .

[69 FR 69306, Nov. 29, 2004]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 52.1070, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

EFFECTIVE DATE NOTES: 1. At 80 FR 32474, June 9, 2015, § 52.1070, the table in paragraph (c) was amended by revising the entries for COMAR 26.11.09.01, 26.11.09.04, 26.11.09.06, 26.11.09.07, and 26.11.09.09, and adding entries for COMAR 26.11.09.10 and 26.11.09.12, effective July 9, 2015. For the convenience of the user, the added and revised text is set forth as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

Environmental Protection Agency

§ 52.1070, Nf.

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP

Code of Maryland Administrative Regulations (COMAR) citation	Title/Subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
26.11.09.01	Definitions	04/28/14	6/9/15 [Insert Federal Register citation].	Definition of "biomass" is added.
26.11.09.04	Prohibition of Certain New Fuel Burning Equipment.	04/28/14	6/9/15 [Insert Federal Register citation].	Revised (C)(1).
26.11.09.06	Control of Particulate Matter	04/28/14	6/9/15 [Insert Federal Register citation].	Revised (D)(1) and (D)(2).
26.11.09.07	Control of Sulfur Oxides from Fuel Burning Equipment.	04/28/14	6/9/15 [Insert Federal Register citation].	Revised (B)(5).
26.11.09.09	Tables and Diagrams	4/26/14	6/9/15 [Insert Federal Register citation].	Amended incorrect reference.
26.11.09.10	Requirements to Burn Used Oil and Waste Combustible Fluid as Fuel.	04/28/14	6/9/15 [Insert Federal Register citation].	New regulation.
26.11.09.12	Standards for Biomass Fuel-Burning Equipment Equal to or Greater Than 350,000 Btu/hr.	04/28/14	6/9/15 [Insert Federal Register citation].	New regulation.

* * * * * § 52.1070 Identification of plan.

2. At 80 FR 27258, May 13, 2015, § 52.1070, paragraph (e) was amended in the table by adding an entry at the end of the table, effective July 13, 2015. For the convenience of the user, the added text is set forth as follows:

* * * * *
(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
2011 Base Year Emissions Inventory for the 2008 8-hour Ozone standard.	Maryland portion of the Washington, DC-MD-VA 2008 ozone nonattainment area.	8/4/14	5/13/15 [insert Federal Register citation].	§ 52.1075(o).

limitations set forth in § 1.515 of this part.

■ 3. Section 1.515 is redesignated as § 1.523 and a new § 1.515 is added to read as follows:

§ 1.515 Disclosure of information to participate in state prescription drug monitoring programs.

(a) *General.* Information covered by §§ 1.500 through 1.527 of this part may be disclosed to State Prescription Drug Monitoring Programs pursuant to the limitations set forth in paragraph (c) of this section.

(b) *Definitions.* For the purposes of this section:

Controlled substance means any substance identified in 21 CFR part 1308 as a schedule II, III, IV, or V controlled substance.

State Prescription Drug Monitoring Program (PDMP) means a State controlled substance monitoring program, including a program approved by the Secretary of Health and Human Services under section 399O of the Public Health Service Act (42 U.S.C. 280g-3).

(c) *Participation in PDMPs.* VA may disclose to PDMPs any of the following information concerning the prescription of controlled substances:

(1) Demographic information of veterans and dependents of veterans who are prescribed a controlled substance. Examples include name, address, and telephone number.

(2) Information about the prescribed controlled substances. Examples include the identification of the substance by a national drug code number, quantity dispensed, number of refills ordered, whether the substances were dispensed as a refill of a prescription or as a first-time request, and date of origin of the prescription.

(3) Prescriber information. Examples include the prescriber's United States Drug Enforcement Administration-issued identification number authorizing the individual to prescribe controlled substances and United States Department of Health and Human Services-issued National Provider Identifier number.

(Authority: 5 U.S.C. 552a; 38 U.S.C. 5701, 7332; 45 CFR 164.512(b))

[FR Doc. 2013-03001 Filed 2-8-13; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2012-0982; FRL-9777-2]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Amendments to Maryland's Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the State of Maryland State Implementation Plan (SIP). The revisions pertain to adoption through incorporation by reference of the national ambient air quality standards (NAAQS) by the State of Maryland. EPA is approving these revisions that adopt the NAAQS for ozone (O₃), sulfur dioxide (SO₂), nitrogen dioxide (NO₂), lead (Pb), particulate matter (PM) and carbon monoxide (CO) as well as the relevant reference and equivalent monitoring methods through incorporation by reference into the Code of Maryland regulations (COMAR) on an "as amended" basis which will prospectively incorporate all future revisions and additions to the NAAQS in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on April 12, 2013 without further notice, unless EPA receives adverse written comment by March 13, 2013. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the *Federal Register* and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2012-0982 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email:* Mastro.Donna@epa.gov.
C. *Mail:* EPA-R03-OAR-2012-0982, Donna Mastro, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2012-

0982. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814-2179, or by email at *Cripps.Christopher@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On November 15, 2012, the State of Maryland submitted a formal revision (SIP Revision #12-07) to its SIP. The SIP revision consists of the adoption of the revisions since 2006 of the following NAAQS along with the associated definitions, reference conditions, and methods of measurement associated with these NAAQS: PM, SO₂, NO₂, Pb and O₃.

II. Summary of SIP Revision

This SIP revision updates Maryland's SIP to incorporate the following revisions to the NAAQS which were promulgated since 2006:

(1) The revised NAAQS for PM (71 FR 61224, Oct. 17, 2006) and the applicable definitions, reference conditions, and methods of measurement as specified in 40 CFR parts 50, 53, and 58;

(2) the NAAQS for Pb (73 FR 67052, Nov. 12, 2008) and the applicable definitions, reference conditions, and methods of measurement as specified in 40 CFR parts 50, 51, 53 and 58;

(3) the revised NAAQS for O₃ (73 FR 16511, Mar. 27, 2008) and the applicable definitions, reference conditions, and methods of measurement as specified in 40 CFR parts 50 and 58;

(4) the revised NAAQS for NO₂ (75 FR 6531, Feb. 9, 2010) and the applicable definitions, reference conditions, and methods of measurement as specified in 40 CFR parts 50 and 58; and

(5) the revised NAAQS for SO₂ (75 FR 35592, June 22, 2010) and the definitions, reference conditions, and methods of measurement as specified in 40 CFR parts 50, 53 and 58;

In addition, Maryland's SIP revision submittal seeks to incorporate by reference the NAAQS of 40 CFR part 50 *prospectively* in order for Maryland's ambient air quality standards to be identical at all times to the NAAQS as well as the pertinent definitions, ambient air monitoring reference and equivalent methods in 40 CFR parts 51, 53 and 58. Therefore, whenever EPA promulgates a new or revised NAAQS in 40 CFR part 50 or revisions to the applicable definitions, ambient air monitoring reference and equivalent methods in 40 CFR parts 51, 53 and 58, the Maryland SIP will automatically reflect such additions and revisions without further action by the State of Maryland or EPA.

Specifically, this revision includes the following changes to Title 26—Department of The Environment, Subtitle 11—Air Quality, Chapter 04 Ambient Air Quality Standards (COMAR 26.11.04):

(1) The deletion of Regulation .04 (COMAR 26.11.04.04) relating to ambient air quality standards for PM;

(2) the deletion of Regulation .05 (COMAR 26.11.04.05) relating to ambient air quality standards for SO₂;

(3) the deletion of Regulation .06 (COMAR 26.11.04.06) relating to ambient air quality standards for CO;

(4) the deletion of Regulation .07 (COMAR 26.11.04.07) relating to ambient air quality standards for O₃;

(5) the deletion of Regulation .08 (COMAR 26.11.04.08) relating to ambient air quality standards for NO₂;

(6) the deletion of Regulation .09 (COMAR 26.11.04.09) relating to ambient air quality standards for Pb;

(7) the deletion of Regulation .02 (COMAR 26.11.04.02) relating to definitions, reference conditions, and methods of measurement as those specified in 40 CFR parts 50, 53, and 58 of the 2003 edition;

(8) the deletion of Regulation 02 (COMAR 26.11.04.02) which stated that "Regulations .03–.09 [COMAR 26.11.04.3–.09] of this chapter contain State-adopted National Ambient Air Quality Standards" which no longer has any substantive value because the regulations it cites have been repealed; and

(9) the addition of a new Regulation .02 (COMAR 26.11.04.02) which specifies that the ambient air quality standards, definitions, reference conditions, and methods of measurement are those specified in 40 CFR parts 50, 51, 53, and 58, "as amended." Maryland uses the phrase "as amended" in COMAR 26.11.01.02 so that future versions of these regulations are adopted prospectively. See Maryland's "Incorporation By Reference (IBR) Manual," (Revised 7/2009) (available at <http://www.dsd.state.md.us/mdregister/IBRManual.pdf>).

EPA finds that Maryland has adequately incorporated by reference the NAAQS and related definitions, reference conditions, and methods of measurement as specified in 40 CFR parts 50, 51, 53, and 58, and, through the use of the phrase "as amended" in the COMAR regulatory text, is incorporating by reference future amendments to the NAAQS and related definitions, reference conditions, and methods of measurement specified in 40 CFR parts 50, 51, 53, and 58.

III. Final Action

EPA is approving the November 15, 2012 SIP revision which includes amendments to COMAR 26.11.04 into the State of Maryland SIP. EPA is publishing this rule without prior

proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on April 12, 2013 without further notice unless EPA receives adverse comment by March 13, 2013. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 12, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action to approve amendments to COMAR 26.11.04 Ambient Air Quality Standards may not be challenged later in

proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 25, 2013.

W. C. Early,
Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS]

- 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

- 2. In § 52.1070, the table in paragraph (c) is amended by revising the entry for COMAR 26.11.04.02 and by removing the existing entries for COMARS 26.11.04.03 through 26.11.04.09 to read as follows:

§ 52.1070 Identification of plan.
* * * * *
(c) * * *

EPA-APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE MARYLAND SIP

Code of Maryland Administrative Regulations (COMAR) citation	Title/Subject	State effective date	EPA Approval date	Additional explanation/citation at 40 CFR 52.1100
*	*	*	*	*
26.11.04 Ambient Air Quality Standards				
26.11.04.02	Ambient Air Quality Standards, Definitions, Reference Conditions, and Methods of Measurement.	9/17/12	2/11/13 [Insert page number where the document begins].	*
*	*	*	*	*

* * * * *
[FR Doc. 2013-02928 Filed 2-8-13; 8:45 am]
BILLING CODE 6560-50-P

support document (TSD) prepared in support of this proposed rulemaking. A copy of this TSD is located in the docket of this proposed rulemaking.

III. Proposed Action

EPA is proposing to approve the District of Columbia's SIP revisions submitted on January 26, 2010, March 24, 2011 and March 15, 2012, adopting VOC RACT requirements for various source categories. EPA is also proposing to approve the District's negative declarations pursuant to section 182(b)(2)(A) of the CAA for those CTG categories where no sources are located in the District. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations, 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National

Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, pertaining to District's amendments to regulations for the control of VOCs, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 29, 2013.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2013-02920 Filed 2-8-13; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2012-0982; FRL-9777-3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Amendments to Maryland's Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland for the purpose of adopting through incorporation by reference the national ambient air quality standards (NAAQS). In the Final Rules section of this *Federal Register*, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because EPA views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA

receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by March 13, 2013.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2012-0982 by one of the following methods:

A. *www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *Email: Mastro.Donna@epa.gov*.

C. *Mail: EPA-R03-OAR-2012-0982*, Donna Mastro, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2012-0982. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at

www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of

special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814-2179, or by email at Cripps.Christopher@epa.gov.

SUPPLEMENTARY INFORMATION: For further information regarding Maryland's adoption through incorporation by reference of the national ambient air quality standards (NAAQS), please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this Federal Register publication.

Dated: January 25, 2013.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2013-02926 Filed 2-8-13; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2012-0494; FRL-9778-7]

Approval and Promulgation of Implementation Plans; Oregon: Heat Smart Program and Enforcement Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve multiple revisions to Oregon's State Implementation Plan (SIP) submitted to the EPA by the Oregon Department of Environmental Quality (ODEQ) on October 5, 2011, June 8, 2012, and November 28, 2012. The

October 5, 2011 submission contains revisions to the Heat Smart program and to the enforcement procedures and civil penalties in Oregon Administrative Rules (OAR) Chapter 340, Division 12 (OAR 340-12). The June 8, 2012 submission contains additional revisions to the Heat Smart program, along with minor revisions and clarifications to general air pollution definitions (OAR 340-200), rules for stationary source notification requirements (OAR 340-210), and requirements for fuel burning (OAR 340-228). The November 28, 2012 submission contains revisions to approve the inclusion of expedited enforcement offers and updated penalty classifications and criteria (OAR 340-012).

DATES: Comments must be received on or before March 13, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2012-0494, by one of the following methods:

A. www.regulations.gov. Follow the on-line instructions for submitting comments.

B. *Mail:* Justin A. Spenillo, EPA, Office of Air, Waste, and Toxics, AWT-107, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101.

C. *Email:* R10-Public_Comments@epa.gov.

D. *Hand Delivery:* EPA, Region 10 Mailroom, 9th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. Attention: Justin A. Spenillo, Office of Air Waste, and Toxics, AWT-107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R10-OAR-2012-0494. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information that is restricted by statute from disclosure. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. The www.regulations.gov Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through www.regulations.gov your email address will be automatically

captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information that is restricted by statute from disclosure. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at www.regulations.gov or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Justin A. Spenillo, (206) 553-6125; or by email at spenillo.justin@epa.gov; body.steve@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. This Action
- II. Why are we proposing to approve these revisions?
 - A. The EPA's Review of OAR Chapter 340, Division 262 Heat Smart Program for Residential Woodstoves and Other Solid Fuel Heating Devices (October 5, 2011 and June 8, 2012 Submittals)
 - B. The EPA's Review of OAR Chapter 340, Division 12 Rules (October 5, 2011 and November 28, 2012 Submittals)
 - C. The EPA's Review of OAR Chapter 340, Divisions 200, 210, and 228 Rules (June 8, 2012 Submittal)
 - D. The EPA's Review of OAR 340-200-0040 (October 5, 2011, June 8, 2012, and November 28, 2012 Submittals)
- III. Summary of Action
- IV. Statutory and Executive Orders Review

I. This Action

Title I of the CAA, as amended by Congress in 1990, specifies the general requirements for states to submit SIPs to attain and maintain the National Ambient Air Quality Standards (NAAQS) and the EPA's actions regarding approval of those SIPs. In this action, we are proposing to approve and incorporate by reference (IBR) revisions

MONTGOMERY COUNTY CODE
Chapter 3

Chapter 3. AIR QUALITY CONTROL.*

- § 3-1. Purpose of chapter.
- § 3-2. Definitions.
- § 3-3. Administration.
- § 3-4. Regulations.
- § 3-5. Ambient air quality requirements for visible emissions.
- § 3-6. Ambient air quality requirements for particulate matter from unconfined sources.
- § 3-7. Ambient air quality requirements for particulate matter from materials handling and construction.
- § 3-8. Control or prohibition of open fires.
- § 3-9. Ambient air quality requirements for odors.
- § 3-10. Control and prohibition of indoor air pollution.
- § 3-11. Determining compliance.
- § 3-12. Emergency provisions.
- § 3-13. Enforcement and penalties.
- § 3-14. Appeals.

*Editor's note—2002 L.M.C., ch. 6, § 2, states: Transition. Until superseded, an Executive Regulation issued under Chapter 3 before the effective date of this Act [April 11, 2002] remains in effect to the extent the regulation is consistent with this Act. This Act does not apply to a violation of Chapter 3 that occurred before this Act took effect [April 11, 2002].

Chapter 3 is discussed in Miller v. Maloney Concrete Company, 63 Md.App. 38, 491 A.2d 1218 (1985).

Cross references—Department of environmental protection, § 2-29; open fires generally, § 22-88; dust and air pollution from quarries, § 38-15; industrial zoning district air pollution standards, § 59-C-5.438(c).

Sec. 3-1. Purpose of chapter.

- (a) It is the policy of the County to protect the County's ambient air quality as necessary to:
- (1) protect the health, safety, comfort and well-being of the County's residents and businesses;
 - (2) prevent injury to plant and animal life and to property; and
 - (3) protect the recreational resources of the County.
- (b) It is the County's goal to protect and facilitate the improvement of the indoor air quality experienced by businesses and occupants of multi-tenant buildings.
- (c) The Department must apply principles of sound environmental health management and use reasonably available air quality control technology to implement this Chapter. (1975 L.M.C., ch. 17, § 1; 2002 L.M.C., ch. 6, § 1.)

Editor's note—2002 L.M.C., ch. 6, § 2, states: Transition. Until superseded, an Executive Regulation issued under Chapter 3 before the effective date of this Act [April 11, 2002] remains in effect to the extent the regulation is consistent with this Act. This Act does not apply to a violation of Chapter 3 that occurred before this Act took effect [April 11, 2002].

Sec. 3-2. Definitions.

In this Chapter, the following words and phrases have the following meanings:

Air pollutant: Any substance whose release into the atmosphere causes air pollution. An air pollutant may be in the form of a smoke, gas, dust, odor, particulate matter or combinations of smoke, gas, dust, odor, or particulate matter.

Air pollution: The presence in the atmosphere of any substances or combinations of substances whose character, quantities or duration make those substances likely to pose a health hazard to humans, plants, or animals, or unreasonably interfere with the use and enjoyment of property. The substances may be emitted as odors, solids, vapors, liquids, or gases from any single source or in combination with other sources.

Air pollution episode: A recognized occurrence designated by the Governor of Maryland or the Secretary of the state Department of the Environment as an accumulation of ambient air pollutants at levels harmful to human health.

Control equipment: Any device or equipment that prevents or reduces emissions.

Department: The Department of Environmental Protection.

MONTGOMERY COUNTY CODE
Chapter 3

§3-2

Director: The Director of the Department or the Director's designee.

Emission: Any substance, other than water in an uncombined form, discharged into the atmosphere, including odors, particulate matter, vapors, gases, or any combination of these substances.

Excessive lodging: A condition of farmland where embedding of the previous crop causes the normal use of harvesting, tillage, or planting equipment to be impossible or impracticable.

Incinerator: Any equipment or device used to destroy garbage, rubbish or other wastes by burning.

Indoor air pollutant: Any substance whose indoor presence causes indoor air pollution. An indoor air pollutant may consist of particles such as dust, fibers, asbestos, or radon progeny; gases such as formaldehyde, carbon monoxide, mists, or bioaerosols; biological substances such as viruses, bacteria, fungi or molds; or combination of substances.

Indoor air pollution: The indoor presence of any airborne substance, such as particles, fumes, mists, gases, or vapors or combination of substances likely to pose a health hazard to humans, plants, or animals or unreasonably interfere with the use and enjoyment of residential or non-residential property, including the ordinary conduct of business.

Installation: Any article, machine, or equipment, including emission control equipment, processing equipment, manufacturing equipment, fuel burning equipment, incinerators or any equipment or construction capable of generating, causing or reducing emissions.

Odor: The property of an emission that stimulates a person's sense of smell.

Official fire: A fire authorized by a government officer for the purposes listed in this Chapter.

Opacity: The degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

Open fire: A fire in which any material is burned in the open or a receptacle other than a furnace, incinerator or other equipment not in conformance with the design requirements of the applicable building code of the County or the air quality control regulations of the State.

Particulate matter: Material other than water in uncombined form which is or has been airborne and exists as a liquid or solid at standard conditions of temperature 25 degrees Celsius (77 degrees Fahrenheit) and pressure of 29.92 inches (760 mm) mercury.

Permit: An air pollution control permit issued by the Department or the Maryland Department of the Environment covering open burning, installation, or operation of equipment with the potential to emit air pollution.

Person: An individual, group of individuals, partnership, firm, voluntary association, public or private corporation, or an agency, or department of the County or of any federal, state, or municipal government to the extent allowed under federal, state, or municipal law.

Plan for compliance: A schedule of actions designed to achieve compliance with this Chapter after a specified period of time submitted by a violator and approved by the Director.

Source: A person or property that is contributing to air pollution.

Unconfined source: An installation that causes emissions that are not enclosed in a stack, duct, hood, flue, or other conduit, but that escape into the atmosphere through openings such as windows, vents, or doors, ill fitting closures, or poorly maintained equipment. (1975 L.M.C., ch. 17, § 1; 2002 L.M.C., ch. 6, § 1.)

Editor's note—2002 L.M.C., ch. 6, § 2, states: Transition. Until superseded, an Executive Regulation issued under Chapter 3 before the effective date of this Act [April 11, 2002] remains in effect to the extent the regulation is consistent with this Act. This Act does not apply to a violation of Chapter 3 that occurred before this Act took effect [April 11, 2002].

Sec. 3-3. Administration.

- (a) The Director must enforce this Chapter. The Director must advise, consult, and cooperate with other local government units, State agencies, interstate agencies, the federal government, private industries and businesses, homeowners associations, and other interested persons about air quality problems that affect human health.
- (b) This Chapter does not waive any requirement of State or federal law. (1975 L.M.C., ch. 17, § 1; 2002 L.M.C., ch. 6, § 1.)

Editor's note—2002 L.M.C., ch. 6, § 2, states: Transition. Until superseded, an Executive Regulation issued under Chapter 3 before the effective date of this Act [April 11, 2002] remains in effect to the extent the regulation is consistent with this Act. This Act does not apply to a violation of Chapter 3 that occurred before this Act took effect [April 11, 2002].

Sec. 3-4. Regulations.

The County Executive may adopt regulations under method (2) to implement this Chapter. Regulations adopted under this Chapter must not conflict with, waive any provisions of, or be less restrictive than any requirement of State or federal law. (1975 L.M.C., ch. 17, § 1; 1984 L.M.C., ch. 24, § 6; 1984 L.M.C., ch. 27, § 6; 2002 L.M.C., ch. 6, § 1.)

Editor's note—2002 L.M.C., ch. 6, § 2, states: Transition. Until superseded, an Executive Regulation issued under Chapter 3 before the effective date of this Act [April 11, 2002] remains in effect to the extent the regulation is consistent with this Act. This Act does not apply to a violation of Chapter 3 that occurred before this Act took effect [April 11, 2002].

Sec. 3-5. Ambient air quality requirements for visible emissions.

- (a) *Generally.* A person must not cause or allow the discharge of any visible emission from any installation or building, other than water in an uncombined form, into the atmosphere.
- (b) *Exceptions.* Subsection (a) does not apply to any:
 - (1) Emission during start-up and process modifications or adjustments; or occasional cleaning of control equipment, that is not greater than 40 percent opacity for a period of not more than 6 consecutive minutes in any 60-minute period.
 - (2) Emission from a food preparation installation, such as a char-broiler or pit barbecue, that operates at one location less than 15 days in any 365-day period, or that is not greater than 10 percent opacity.
 - (3) Emission caused by wood burning in a residential fireplace or wood stove, or emission recreational purposes such as a campfire;
 - (4) Emission from an open fire (except a salamander) that complies with this Chapter. (1975 L.M.C., ch. 17, § 1; 2002 L.M.C., ch. 6, § 1.)

Editor's note—2002 L.M.C., ch. 6, § 2, states: Transition. Until superseded, an Executive Regulation issued under Chapter 3 before the effective date of this Act [April 11, 2002] remains in effect to the extent the regulation is consistent with this Act. This Act does not apply to a violation of Chapter 3 that occurred before this Act took effect [April 11, 2002].

Sec. 3-6. Ambient air quality requirements for particulate matter from unconfined sources.

A person must not cause or allow emissions from an unconfined source without taking reasonable precautions to prevent particulate matter from becoming airborne. When the Director orders, these precautions must include installing and using hoods, fans, and dust collectors to enclose, capture, and vent emissions. (2002 L.M.C., ch. 6, § 1.)

Editor's note—2002 L.M.C., ch. 6, § 2, states: Transition. Until superseded, an Executive Regulation issued under Chapter 3 before the effective date of this Act [April 11, 2002] remains in effect to the extent the regulation is consistent with this Act. This Act does not apply to a violation of Chapter 3 that occurred before this Act took effect [April 11, 2002].

Former § 3-6, "Control and prohibition of open fires," was repealed, reenacted with amendments, retitled, and renumbered § 3-8, pursuant to 2002 L.M.C., ch. 6, § 1

Sec. 3-7. Ambient air quality requirements for particulate matter from materials handling and construction.

- (a) A person must not cause or allow any material to be handled, transported, or stored, or any building or road to be constructed, altered, repaired, or demolished, without taking reasonable precautions to prevent particulate matter from becoming airborne.
- (b) Unless the Director finds otherwise in a particular situation, reasonable precautions include:
 - (1) using water or chemicals to control dust when demolishing a building or structure, undertaking construction operations, grading a road, or clearing land;
 - (2) applying asphalt, water, or suitable chemicals on a dirt road, materials stockpile, or other surface that can create airborne dust;
 - (3) installing and using hoods, fans, and dust collectors to enclose and vent the handling of dusty materials, and employing reasonable containment methods to prevent the release of particulate matter during sandblasting or similar operations;
 - (4) covering each open-bodied vehicle used to transport any material likely to create air pollution at all times when the vehicle is moving;
 - (5) paving a roadway and maintaining it in clean condition; and
 - (6) promptly removing earth or other dust-producing material from a paved street to which the material was transported by truck, earth moving equipment, or water erosion. (2002 L.M.C., ch. 6, § 1.)

Editor's note—2002 L.M.C., ch. 6, § 2, states: Transition. Until superseded, an Executive Regulation issued under Chapter 3 before the effective date of this Act [April 11, 2002] remains in effect to the extent the regulation is consistent with this Act. This Act does not apply to a violation of Chapter 3 that occurred before this Act took effect [April 11, 2002].

2002 L.M.C., ch. 6, § 1, repealed former § 3-7, "Permits for certain equipment," which was derived from 1975 L.M.C., ch. 17, § 1.

Sec. 3-8. Control or prohibition of open fires.

- (a) **Official fires.** A public officer may set an open fire with due notice to, but without prior approval from, the Director if the public officer is performing an official duty and the fire is necessary to:

- (1) prevent a fire hazard which cannot be abated by other means;
 - (2) instruct public fire fighters or industrial employees under supervision of the Fire Administrator if the instruction does not occur during an air pollution episode and the fires do not contain asphaltic or asbestos materials; or
 - (3) protect the public health, safety or welfare.
- (b) **Open fires.** Except during an air pollution episode, the following open fires are allowed without prior approval of the Director if the fire does not otherwise violate any other law or regulation:
- (1) **Cooking.** A person may use a fire to cook food if the person uses an outdoor cooking apparatus approved for use by a nationally recognized standards organization, such as Underwriters Laboratory, and the person does not create a nuisance.
 - (2) **Salamanders.** Construction workers and other outdoor workers may use a salamander or other device fired with propane gas or No. 2 fuel oil for heating if the device does not create visible emissions.
 - (3) **Recreational purposes.** A person may set an open fire, such as a campfire, for recreational purposes if the fire does not produce visible emissions that exceed 20 percent opacity for a total of more than 3 minutes in any 60-minute period and is not larger than 3 feet in diameter.
- (c) **Permitted fires.** Except as provided in subsections (a) and (b), a person must not burn any refuse or plant life outside of a building unless the person has obtained a permit from the Director. The Director must limit the duration of the permit. The Director may issue the permit for any of the following reasons or purposes:
- (1) **Agricultural open burning.** A person may set a fire during agricultural operations if the fire complies with subsection (d) and the person obtains an agricultural burning permit before setting the fire. The Department may grant a permit to burn excessive lodging or destroy diseased crops and other vegetation originating on the applicant's property only:
 - (A) on a property that is agriculturally assessed for property tax purposes; and
 - (B) if the burning is necessary to maintain agricultural land in production.

MONTGOMERY COUNTY CODE
Chapter 3

- (2) **Ceremonial burning.** A person may set fires for a ceremonial purpose.
 - (3) **Disaster rubbish.** A person may burn rubbish, including landscape waste, during a community disaster if the County Executive has officially declared a state of emergency.
 - (4) **No alternative.** A person may burn any material if the Director finds that there is no practical alternative way to dispose of or store the material more safely.
- (d) **Conditions.** The Director may impose any condition on an open burning permit to prevent air pollution or protect the health, safety, comfort and property of persons. An open fire must at all times be attended by the permittee or the permittee's agent who has the burning permit in possession during the burning. The Director must not grant a permit if the intended activity would:
- (1) create a hazardous condition;
 - (2) be conducted during an air pollution episode or other burning prohibition period declared by the Governor or the Secretary of the Maryland Department of the Environment;
 - (3) be conducted within 500 yards of an occupied building or a heavily traveled public road, walkway, path, or other facility used by the public;
 - (4) violate any other law or regulations;
 - (5) create visible emissions whose opacity exceeds 20 percent for more than a total of 3 minutes in any consecutive 60-minute period; or
 - (6) include the burning of leaves, brush, other vegetation, or household trash.
- (e) **Permit denial.** The Director may deny a request for an open burning permit if:
- (1) the applicant has not shown that the applicant can comply with this Chapter and any applicable State or federal air pollution control law; or
 - (2) the Director finds, based on the applicant's history, that the applicant is not likely to comply with all applicable County, State, and federal air pollution control laws.
- (f) **Permit revocation or suspension.** The Director may revoke, suspend, or modify a permit granted under this Section if the Director finds that the permittee has violated any term or condition of the permit. Notice of any proposed revocation, suspension, or

modification must be in writing, include the reason for the decision, and give the permittee an opportunity for a hearing. A request for a hearing does not stay the Director's action.

- (g) **Extinguishing fires in violation.** A person responsible for starting a fire that violates this Section must promptly extinguish the fire after receiving notice from the Department. The notice to extinguish the fire is not an exclusive remedy. (1975 L.M.C., ch. 17, § 1; 2002 L.M.C., ch. 6, § 1.)

Editor's note—2002 L.M.C., ch. 6, § 2, states: Transition. Until superseded, an Executive Regulation issued under Chapter 3 before the effective date of this Act [April 11, 2002] remains in effect to the extent the regulation is consistent with this Act. This Act does not apply to a violation of Chapter 3 that occurred before this Act took effect [April 11, 2002].

Former § 3-6, "Control and prohibition of open fires," was repealed, reenacted with amendments, retitled, and renumbered § 3-8, pursuant to 2002 L.M.C., ch. 6, § 1.

2002 L.M.C., ch. 6, § 1, repealed former § 3-8, "Applications for permits," which was derived from 1975 L.M.C., ch. 17, § 1.

Cross reference—Open fires, § 22-88.

Sec. 3-9. Ambient air quality requirements for odors.

- (a) A person must not cause or allow the emission into the atmosphere of any gas, vapor, or particulate matter beyond the person's property line or unit if a resulting odor creates air pollution.
- (b) The Director may issue a citation for violating subsection (a) if the Director:
- (1) witnesses the violation; or
 - (2) receives complaints from at least 2 individuals who have person knowledge of the air pollution odor. (2002 L.M.C., ch. 6, § 1.)

Editor's note—2002 L.M.C., ch. 6, § 2, states: Transition. Until superseded, an Executive Regulation issued under Chapter 3 before the effective date of this Act [April 11, 2002] remains in effect to the extent the regulation is consistent with this Act. This Act does not apply to a violation of Chapter 3 that occurred before this Act took effect [April 11, 2002].

2002 L.M.C., ch. 6, § 1, repealed former § 3-9, "Plan of compliance," which was derived from 1975, L.M.C., ch. 17, § 1.

Sec. 3-10. Control and prohibition of indoor air pollution.

- (a) A person must not cause or allow the emission of indoor air pollutants beyond the person's property line in a manner that creates indoor air pollution.
- (b) Subsection (a) does not apply to:
 - (1) the residential use of personal hygiene products;
 - (2) smoking in a private home; or
 - (3) residential cooking odors.
- (c) In this Section, "property line" means the boundary of a residential or non-residential area that a person legally uses or owns. For a property divided into more than one legal unit, such as multi-family housing or a multi-tenant commercial property, "property line" also includes any boundary between a unit and a common area or between units.
- (d) The Director may issue a citation for violating this Section if the Director:
 - (1) witnesses the violation; or
 - (2) receives complaints from at least 2 individuals who have person knowledge of the indoor air pollution. (2002 L.M.C., ch. 6, § 1.)

Editor's note—2002 L.M.C., ch. 6, § 2, states: Transition. Until superseded, an Executive Regulation issued under Chapter 3 before the effective date of this Act [April 11, 2002] remains in effect to the extent the regulation is consistent with this Act. This Act does not apply to a violation of Chapter 3 that occurred before this Act took effect [April 11, 2002].

2002 L.M.C., ch. 6, § 1, repealed former § 3-10, "Abatement orders," which was derived from 1975, L.M.C., ch. 17, § 1.

Sec. 3-11. Determining compliance.

- (a) **Compliance methods.** The Director may conduct testing or require a property owner to conduct testing to determine compliance with this Chapter in response to a complaint.
- (b) **Manner of testing.** A property owner must conduct all tests in a manner, and before the deadline, set by the Director and submit a detailed report of all test results to the Director within 15 days after the testing is complete unless the Director grants an extension. Each test must be performed by a person qualified to conduct the test, as determined by the Director. (2002 L.M.C., ch. 6, § 1.)

MONTGOMERY COUNTY CODE
Chapter 3

§3-11

Editor's note—2002 L.M.C., ch. 6, § 2, states: Transition. Until superseded, an Executive Regulation issued under Chapter 3 before the effective date of this Act [April 11, 2002] remains in effect to the extent the regulation is consistent with this Act. This Act does not apply to a violation of Chapter 3 that occurred before this Act took effect [April 11, 2002].

2002 L.M.C., ch. 6, § 1, repealed former § 3-11 "Revocation of permit," which was derived from 1975, L.M.C., ch. 17, § 1.

Sec. 3-12. Emergency provisions.

- (a) Notwithstanding this Chapter or any other law, if the Director finds that a person is causing or contributing to air pollution and that the pollution creates an emergency that requires immediate action to protect the public health or safety, the Director must order the person to immediately reduce or stop the air pollution. That person must immediately comply with the Director's order.
- (b) If the Governor or the Secretary of the Maryland Department of the Environment declares an air pollution episode, the Director may take any action authorized under State law to protect the public health or safety. (1975 L.M.C., ch. 17, § 1; 2002 L.M.C., ch. 6, § 1.)

Editor's note—2002 L.M.C., ch. 6, § 2, states: Transition. Until superseded, an Executive Regulation issued under Chapter 3 before the effective date of this Act [April 11, 2002] remains in effect to the extent the regulation is consistent with this Act. This Act does not apply to a violation of Chapter 3 that occurred before this Act took effect [April 11, 2002].

Former § 3-14, "Emergency provisions," was repealed, reenacted with amendments, and renumbered § 3-12, pursuant to 2002 L.M.C., ch. 6, § 1

2002 L.M.C., ch. 6, § 1, repealed former § 3-12, "Testing and monitoring," which was derived from 1975 L.M.C., ch. 17, § 1.

Sec. 3-13. Enforcement and penalties.

- (a) The Director may enter a non-residential site during normal business hours or at any other reasonable time to inspect, investigate, or monitor activities subject to this Chapter. If the person in charge of the site does not consent to an entry by the Director, the Director must obtain an administrative search warrant from a court by satisfying reasonable statutory or administrative standards for conducting an inspection.
- (b) The Director may, with the consent of the owner or occupant, enter a private dwelling at any reasonable time to inspect, investigate, or monitor activities subject to this Chapter. If the owner or occupant of the residence does not consent to an entry by the Director,

MONTGOMERY COUNTY CODE
Chapter 3

the Director may obtain an administrative search warrant from a court by showing that reasonable legislative or administrative standards for conducting an area inspection have been satisfied.

- (c) A person must not hinder, prevent, or unreasonably refuse to permit a lawful inspection, investigation, or monitoring under this Chapter.
- (d) The Director, the Fire Administrator, or the Administrator's designee may issue a notice of violation, corrective order, stop-work order, or civil citation to any person who causes or allows a violation of this Chapter.
- (e) A person who causes or allows a violation of this Chapter must submit a plan for compliance if required under a notice of violation or corrective order. The plan must include a schedule to correct the violation. The Director must approve or disapprove the plan and any amendment to an approved plan.
- (f) The Director may issue a stop-work order to any person who violates this Chapter in connection with an activity conducted under a building permit issued under Chapter 8 or a sediment control permit issued under Chapter 19.
- (g) Any violation of this Chapter is a Class A violation. Each day a violation continues is a separate offense.
- (h) In addition to any other remedy allowed by law, the Department may seek injunctive or other appropriate judicial relief to prevent or stop a violation of this Chapter. (2002 L.M.C., ch. 6, § 1.)

Editor's note—2002 L.M.C., ch. 6, § 2, states: Transition. Until superseded, an Executive Regulation issued under Chapter 3 before the effective date of this Act [April 11, 2002] remains in effect to the extent the regulation is consistent with this Act. This Act does not apply to a violation of Chapter 3 that occurred before this Act took effect [April 11, 2002].

2002 L.M.C., ch. 6, § 1, repealed former § 3-13, "Circumvention and right of entry," which was derived from 1975 L.M.C., ch. 17, § 1.

Sec. 3-14. Appeals.

- (a) A person aggrieved by an action taken or an order issued under this Chapter may seek reconsideration by filing a written request with the Director within 10 days after the action or order. The request must state the date and nature of the action or order, the remedy requested, and why the Director should grant the request. Within 10 days after receiving the request, the Director must:

MONTGOMERY COUNTY CODE
Chapter 3

§3-14

- (1) issue a written decision on the request for reconsideration if the Director finds no material facts in dispute; or
- (2) notify the person in writing of any material facts in dispute and:
 - (A) establish a deadline of not more than 30 additional days for the Department to resolve the dispute and the Director to issue a written decision on the request for reconsideration; or
 - (B) refer the matter to a hearing officer under Article I of Chapter 2A.
- (b) A request for consideration does not stay the action or order unless the Director grants a stay. The Director's decision on a request for reconsideration is a final decision.
- (c) A person aggrieved by a final decision of the Director under this Chapter may appeal the action or order under Section 2A-11. (1975 L.M.C., ch. 17, § 1; 1993 L.M.C., ch. 20, § 1; 2002 L.M.C., ch. 6, § 1.)

Editor's note—2002 L.M.C., ch. 6, § 2, states: Transition. Until superseded, an Executive Regulation issued under Chapter 3 before the effective date of this Act [April 11, 2002] remains in effect to the extent the regulation is consistent with this Act. This Act does not apply to a violation of Chapter 3 that occurred before this Act took effect [April 11, 2002].

Former § 3-16, "Appeals," was repealed, reenacted with amendments, and renumbered § 3-14, pursuant to 2002 L.M.C., ch. 6, § 1. Former § 3-14, "Emergency provisions," was repealed, reenacted with amendments, and renumbered § 3-12, pursuant to 2002 L.M.C., ch. 6, § 1.

Editor's note—2002 L.M.C., ch. 6, § 1, repealed former § 3-15, "Prima facie evidence of unlawful emissions," which was derived from 1975 L.M.C., ch. 17, § 1.

Editor's note—Former § 3-16, "Appeals," was repealed, reenacted with amendments, and renumbered § 3-14, pursuant to 2002 L.M.C., ch. 6, § 1.

Editor's note—2002 L.M.C., ch. 6, § 1, repealed former § 3-17, "Violations, penalties and liabilities," which was derived from 1975 L.M.C., ch. 17, § 1; 1983 L.M.C., ch. 22, § 5.)

MONTGOMERY COUNTY CODE
ZONING ORDINANCE

§59-G-1.1

Chapter 59

Article 59-G

**MONTGOMERY COUNTY CODE ZONING ORDINANCE, ARTICLE 59-G-1.2 HAS BEEN
SUPERSEDED, BUT APPLIED AT THE TIME OF THE MONTGOMERY COUNTY BOARD OF
APPEALS' DECISION IN THIS CASE**

...

Sec. 59-G-1.2. Conditions for granting.

59-G-1.2.1. Standard for evaluation.

A special exception must not be granted without the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might

July 2013

Article G: Page 59G-3

MONTGOMERY COUNTY CODE
ZONING ORDINANCE
Chapter 59

Article 59-G

have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with inherent adverse effects, are a sufficient basis to deny a special exception.

59-G-1.21. General conditions.

- (a) A special exception may be granted when the Board or the Hearing Examiner finds from a preponderance of the evidence of record that the proposed use:
- (1) Is a permissible special exception in the zone.
 - (2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.
 - (3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny a special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.
 - (4) Will be in harmony with the general character of the neighborhood, considering population density, design, scale, and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.
 - (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

MONTGOMERY COUNTY CODE
ZONING ORDINANCE
Chapter 59

§ 59-G-1.2

Article 59-G

- (6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.
- (7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master plan do not alter the nature of an area.
- (8) Will not adversely affect the health, safety, security, morals, or general welfare of residents, visitors, or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.
- (9) Will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities.
 - (A) If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of granting the special exception.
 - (B) If the special exception:
 - (i) does not require approval of a new preliminary plan of subdivision; and
 - (ii) the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the special exception's impact;

then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.

MONTGOMERY COUNTY CODE
ZONING ORDINANCE
Chapter 59

Article 59-G

- (C) With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.
- (b) Nothing in this Article relieves an applicant from complying with all requirements to obtain a building permit or any other approval required by law. The Board's finding of any facts regarding public facilities does not bind any other agency or department which approves or licenses the project.
- (c) The applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.

59-G-1.22. Additional requirements.

- (a) The Board, the Hearing Examiner, or the District Council, as the case may be, may supplement the specific requirements of this Article with any other requirements necessary to protect nearby properties and the general neighborhood.
- (b) Using guidance by the Planning Board, the Board, the Hearing Examiner, or the District Council, as the case may be, may require a special exception to comply with Division 59-D-3 if:
 - (1) The property is in a zone requiring site plan approval, or
 - (2) The property is not in a zone requiring site plan approval, but the Planning Board has indicated that site plan review is necessary to regulate the impact of the special exception on surrounding uses because of disparity in bulk or scale, the nature of the use, or other significant factors.

59-G-1.23. General development standards.

- (a) **Development Standards.** Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.
- (b) **Parking requirements.** Special exceptions are subject to all relevant requirements of Article 59-E.

MONTGOMERY COUNTY CODE
ZONING ORDINANCE
Chapter 59

§59-G-1.2

Article 59-G

- (c) **Minimum frontage.** In the following special exceptions the Board may waive the requirement for a minimum frontage at the street line if the Board finds that the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of section 59-G-1.21:
- (1) Rifle, pistol and skeet-shooting range, outdoor.
 - (2) Sand, gravel or clay pits, rock or stone quarries.
 - (3) Sawmill.
 - (4) Cemetery, animal.
 - (5) Public utility buildings and public utility structures, including radio and T.V. broadcasting stations and telecommunication facilities.
 - (6) Equestrian facility.
 - (7) Heliport and helistop.
- (d) **Forest conservation.** If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.
- (e) **Water quality plan.** If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.
- (f) **Signs.** The display of a sign must comply with Article 59-F.
- (g) **Building compatibility in residential zones.** Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.

MONTGOMERY COUNTY CODE
ZONING ORDINANCE
Chapter 59

Article 59-G

- (h) **Lighting in residential zones.** All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:
- (1) Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.
 - (2) Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.

59-G-1.24. Neighborhood need.

In addition to the findings and requirements of Article 59-G, the following special exceptions may only be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that a need exists for the proposed use to serve the population in the general neighborhood, considering the present availability of identical or similar uses to that neighborhood:

- (1) Automobile filling station.
- (2) Automobile and light trailer rental lot, outdoor.
- (3) Automobile, truck and trailer rental lot, outdoor.
- (4) Automobile sales and service center.
- (5) Swimming pool, community.
- (6) Swimming pool, commercial.

...

§59-G-2.05.1

MONTGOMERY COUNTY CODE
ZONING ORDINANCE
Chapter 59

Article 59-G

**MONTGOMERY COUNTY CODE ZONING ORDINANCE, ARTICLE 59-G-2.06 HAS BEEN
SUPERSEDED, BUT APPLIED AT THE TIME OF THE MONTGOMERY COUNTY BOARD OF
APPEALS' DECISION IN THIS CASE**

...

Sec. 59-G-2.06. Automobile filling stations.

- (a) In addition to findings required in division 59-G-1, an automobile filling station may be permitted if the Board of Appeals finds that:
- (1) the use will not constitute a nuisance because of noise, fumes, odors, or physical activity in the location proposed;
 - (2) the use at the proposed location will not create a traffic hazard or traffic nuisance because of its location in relation to similar uses, necessity of turning movements in relation to its access to public roads or intersections, or its location in relation to other buildings or proposed buildings on or near the site and the traffic pattern

October 2012

Article G: Page 59G-30

MONTGOMERY COUNTY CODE
ZONING ORDINANCE
Chapter 59

§ 59-G-2.06

Article 59-G

from such buildings, or by reason of its location near a vehicular or pedestrian entrance or crossing to a public or private school, park, playground, or hospital, or other public use or place of public assembly; and

- (3) the use at the proposed location will not adversely affect nor retard the logical development of the general neighborhood or of the industrial or commercial zone in which the station is proposed, considering service required, population, character, density, and number of similar uses.

(b) In addition, the following requirements must be satisfied:

- (1) After August 13, 2012, the area identified by a special exception application for a new automobile filling station designed to dispense more than 3.6 million gallons per year must be located at least 300 feet from the lot line of any public or private school or any park, playground, day care center, or any outdoor use categorized as cultural, entertainment and recreation use.
- (2) When such use abuts a residential zone or institutional premises not recommended for reclassification to commercial or industrial zone on an adopted master plan and is not effectively screened by a natural terrain feature, the use must be screened by a solid wall or a substantial, solid fence, not less than 5 feet in height, together with a 3-foot planting strip on the outside of such wall or fence, planted in shrubs and evergreens. Location, maintenance, vehicle sight distance provisions, and advertising pertaining to screening must satisfy Article 59-E. Screening must not be required on street frontage.
- (3) Product displays, parked vehicles, and other obstructions that adversely affect visibility at intersections or to station driveways are prohibited.
- (4) Lighting must not reflect or cause glare into any residential zone. Lighting levels along the side and rear lot lines adjacent to a residential zone must not exceed 0.1 footcandle.
- (5) When such use occupies a corner lot, the ingress or egress driveways must be located at least 20 feet from the intersection of the front and side street lines of the lot as defined in Section 59-A-2.1, and such driveways must not exceed 30 feet in width.
- (6) Each gasoline pump or other service appliance must be located on the lot at least 10 feet behind the building line; and all service, storage, or similar activities in connection with the use must be conducted entirely within the building. There

MONTGOMERY COUNTY CODE
ZONING ORDINANCE
Chapter 59

Article 59-G

must be at least 20 feet between driveways on each street, and each driveway must be perpendicular to the curb or street line.

- (7) Light automobile repair work may be done at an automobile filling station, but major repairs, spray paint operation or body and fender repair are prohibited uses.
- (8) Vehicles must be parked completely off of the public right-of-way.
- (9) In a C-1 zone, an automobile, light truck, and light trailer rental, as defined in Section 59-G-2.07, and in a C-2 zone, an automobile, truck and trailer rental lot, as defined in Section 59-G-2.09, may be permitted as a part of the special exception if the requirements of this section are satisfied. In addition, a car wash with up to 2 bays may be allowed as an accessory use as part of the special exception.
- (10) In a Rural Village Overlay Zone the following additional standards apply for new development:
 - (A) Car wash is prohibited.
 - (B) Pump canopies must not exceed 35 feet in height.
 - (C) Any structure approved for the use must not exceed the scale and bulk of existing commercial structures in the village.

(Legislative History: Ord. No. 10-32, § 18; Ord. No. 12-1, § 1; Ord. No. 12-10, § 5; Ord. No. 13-76, §1; Ord. No. 15-71, § 1; Ord. No. 16-55, § 2; Ord. No. 17-19, § 1.)

Editor's note—Section 59-G-2.06 is cited and quoted in Purich v. Draper Properties, Inc., 395 Md. 694, 912 A.2d 598 (2006). In American Oil Company v. Board of Appeals of Montgomery County, 270 Md. 301, 310 A.2d 796 (1973) the court affirmed the denial of a special exception for a gasoline station, ruling that Amoco had not demonstrated a present need by the neighborhood population for the station. In Pemberton v. Montgomery County, 275 Md. 363, 340 A.2d 240 (1975) the court affirmed the granting of a special permit for a gasoline station. In B.P. Oil, Inc. v. County Board of Appeals for Montgomery County, 42 Md. App. 576, 401 A.2d 1054 (1979), the court sustained the County's denial of a special exception for a filling station.

...

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of June, 2016, copies of the foregoing Brief of Appellant Costco Wholesale Corporation and the Joint Record Extract were mailed, first-class postage prepaid, and the Brief was also emailed, to:

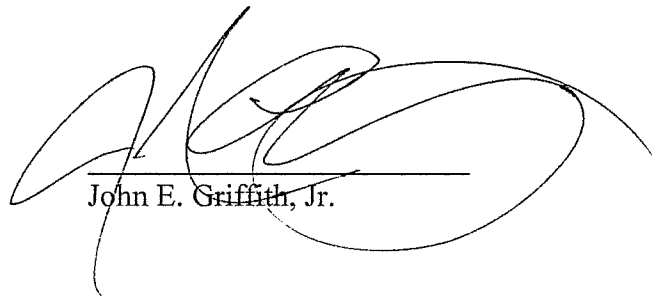
Edward B. Lattner
Chief - Division of Human Resources & Appeals
Edward.lattner@montgomerycountymd.gov
Kathryn Lloyd
Associate County Attorney
Kathryn.Lloyd@montgomerycountymd.gov
Executive Office Bldg.
101 Monroe St. 3rdFl.
Rockville, MD 20850-2580

William J. Chen, Jr., Esquire
Chen & McCabe, L.L.P.
200A Monroe Street, Suite 300
Rockville, MD 20850
wjc@cwtm.net
Attorney for Respondents
Stop Costco Gas Coalition and
Kensington Heights Civic Association

Mark R. Adelman
3206 University Blvd.
Kensington, MD 20895
mra@educationalassistance.org

Karen Cordry, Esquire
10705 Torrance Dr.
Silver Spring, MD 20902
Karenc425@aol.com

Donna R. Savage
10804 McComas Ct.
Kensington, MD 20895
donnarsavage@gmail.com



John E. Griffith, Jr.