



**Maryland**  
Department of  
the Environment

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***Implementation, Maintenance, and Enforcement of the  
2012 PM<sub>2.5</sub> National Ambient Air Quality Standard***

**Prepared for:  
U.S. Environmental Protection Agency**

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**Prepared by:  
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<sup>1</sup>The Annotated Code of Maryland is included in Appendix A for reference purposes only.

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## Background

A State Implementation Plan (SIP) is a plan for each state that identifies how that state will attain and maintain the primary and secondary National Ambient Air Quality Standards (NAAQS). The SIP contains regulations, source-specific requirements, non-regulatory items such as plans and inventories, and other types of submittals designed to satisfy requirements promulgated by the U.S. Environmental Protection Agency (EPA). The initial SIPs for states were approved on May 31, 1972. SIPs may be revised by the state with EPA approval. The federally enforceable SIP for the State of Maryland is compiled under 40 CFR Part 52 Subpart V.

Section 110(a) of the federal Clean Air Act requires that each SIP provide for the implementation, maintenance, and enforcement of the NAAQS. This section also requires that within three years of the promulgation of a NAAQS, a state must adopt and submit such a plan to EPA. These “infrastructure SIPs” provide assurances of state resources and authorities, and where necessary establish the basic state programs, to implement, maintain, and enforce new or revised standards. This document summarizes how the §110(a)(2) requirements for the 2012 PM<sub>2.5</sub> annual NAAQS are addressed by Maryland.

**This submittal addresses Maryland's obligations under §110(a)(2) of the Clean Air Act specifically for the following standard:**

PM<sub>2.5</sub>: On December, 14, 2012, the EPA Administrator strengthened the health-based National Ambient Air Quality Standard (NAAQS) for particulate matter (PM<sub>2.5</sub>)<sup>2</sup>. EPA revised the annual standard to the level of 12.0 micrograms per cubic meter (µg/m<sup>3</sup>), based on the annual arithmetic mean averaged over 3 years. High levels of PM<sub>2.5</sub> contribute to respiratory problems in sensitive individuals.

## Maryland's Plan Elements

The following sections indicate the statutes, regulations, plans, and other elements used in the Maryland State Implementation Plan to meet the required elements of §§110(a)(2)(A)—(M) of the Clean Air Act (CAA).<sup>3</sup>

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<sup>2</sup> See 78 Fed. Reg. 3086-3287, April 15, 2013. “National Ambient Air Quality Standards for Particulate Matter,” Final Rule, 78 FR 3083, 15 January 2013, and CFR Parts 50, 51, 52, 53, and 58 became effective on March 18, 2013. See <http://www.gpo.gov/fdsys/pkg/FR-2013-01-15/pdf/2012-30946.pdf>.

<sup>3</sup> This SIP revision does not include the following two elements of Clean Air Act § 110(a)(2): section 110(a)(2)(C) “to the extent it refers to permit programs (known as ‘nonattainment new source review’) under part D and ... section 110(a)(2)(I) in its entirety.” See U.S. Environmental Protection Agency, “Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under Sections 110(a)(1) and 110(a)(2)” for the 2008 Ozone NAAQS, the 2010 Nitrogen Dioxide NAAQS, the 2010 Sulfur Dioxide NAAQS, and the 2012 Fine Particulate Matter (PM<sub>2.5</sub>) NAAQS Memorandum from Stephen D. Page, Office of Air Quality Planning and Standards (Washington, DC: U.S. Environmental Protection Agency, September 13, 2013), page 4.

**Clean Air Act § 110(a)(2)(A)**

**§ 110(a)(2)(A), Emission Limits and Other Control Measures: 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.<sup>4</sup>**

Maryland’s enforceable emission limitations and other control measures, under the Code of Maryland Regulations (COMAR) and Annotated Code of Maryland, which have been approved as part of Maryland’s SIP except as noted under 40 CFR 52.1070(c) address this item. Some of the SIP-approved COMAR that pertain to PM<sub>2.5</sub> and its precursors are listed below as examples.

<b>COMAR Subtitle/ Chapter</b>	<b>Chapter Name</b>	<b>PM<sub>2.5</sub> and Precursors of PM<sub>2.5</sub></b>
26.11.01	General Administrative Provisions	
26.11.02	Administrative provisions, Permits, Approvals, and Registration	.11, .12
26.11.04	Ambient Air Quality Standards	.02
26.11.05	Air Quality Episode System	.03, .04, .05, .06
26.11.06	General Emissions Standards, Prohibitions, and Restrictions; Materials Handling and Construction; and Confined and Unconfined Sources	.03, .05, .10, .14, <sup>5</sup> .15, .16
26.11.07	Open Fires	.03, .04, .05
26.11.08	Control of Waste Incinerators	.04, .05
26.11.09	Fuel Burning Equipment, Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations	.04, .05, .06, .07, .08, .09, .10, .12
26.11.10	Control of Iron and Steel Production Installations	.03, .04, .05
26.11.11	Control of Petroleum Products Installations, including Asphalt Paving and Asphalt Concrete Plans	.03
26.11.12	Control of Batch-Type Hot-Dip Galvanizing Installation	.04, .05

<sup>4</sup> See 42 U.S. Code 7410(a)(2)(A).

<sup>5</sup> COMAR 26.11.06.14 contains pre-construction permitting requirements for PSD sources.

26.11.17	Requirements for New Major Sources and Modifications	.04, .05, .06, .07, .08, .09
26.11.25	Control of Glass Melting Furnaces	.03, .04
26.11.27	Administrative Provisions and Emission Limitations for Power Plants	.03, .05
11.14.08	Vehicle Emissions Inspection Program <sup>6</sup>	.09
26.11.29	NOx Reduction and Trading Program	.04-.15 <sup>7</sup>
26.11.30	Policies and Procedures Relating to Maryland's NOx Reduction and Trading Program	.03 - .09
20.79.01	Applications Concerning the Construction or Modification of Generating Stations and Overhead Transmission Lines <sup>8</sup>	.06
<b>Annotated Code of Maryland</b>		
Public Service Commission		
§ 7-205. Electric companies -- Modification of power plant		
§ 7-207. Generating stations or transmission lines -- General certification procedure		
§ 7-208. Generating stations or transmission lines -- Joint construction of station and associated lines		

*Source-specific provisions are listed in 40 CFR 52.1070(d).  
The approved plans are listed in 40 CFR 52.1070(e).*

<sup>6</sup> Maryland Dept. of Transportation (MDOT)/Motor Vehicle Administration (MVA) program.

<sup>7</sup> Regulations .03 and .05 were the NOx standards for cement plants and natural gas compression stations.

<sup>8</sup> Modifications to facilities at a power plant.

## Clean Air Act § 110(a)(2)(B)

**§ 110(a)(2)(B), Ambient Air Quality Monitoring/Data System:** *Each such plan shall – (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.*<sup>9</sup>

Maryland's authority to monitor ambient air quality is found under §§2-103(b)(2) and 2-301(a)(1), Environment Article, Annotated Code of Maryland; and COMAR 26.11.04.02 (specifying that methods of measuring ambient air quality levels shall be those specified in 40 CFR Parts 50, 51, 53, and 58, as amended).

Maryland operates and maintains a network of ambient air monitors throughout the State. All ambient air monitors in the Maryland network that are used to determine compliance with the NAAQS have been designated by EPA as either Reference or Equivalent monitors. All ambient air monitors in the Maryland network are subjected to the Quality Assurance requirements of 40 CFR Part 58, Appendix A. In addition, all samplers are located at sites that have met the minimum siting requirements of Part 58, Appendix E.

Maryland has an EPA-approved ambient air monitoring network. EPA approved Maryland's calendar year 2015 ambient air monitoring network plan in its November 12, 2015, letter from EPA Region III Administrator Shawn Garvin to MDE Secretary Ben Grumbles.<sup>10</sup> Also note that Maryland submitted its 2017 ambient air monitoring plan to EPA Region 3 on May 19, 2016.

In order to keep EPA informed of changes to the sampling network, Maryland Department of the Environment (MDE) provides EPA Region III with prior notification of any planned changes to the network. As needed, details of these changes and anticipated approvals of the changes are communicated to EPA.

Pursuant to 40 C.F.R. Part 58, Subpart B, Section 58.10, "Annual monitoring network plan and periodic network assessment," MDE sends the EPA Regional Administrator an Annual Monitoring Network Plan for approval. The plan details any modifications to the network. This plan also provides a description of each modification, the reason for each modification, and any other information relevant to the modifications.

Section 58.10 also requires MDE (beginning July 1, 2010) to perform and submit to the EPA Regional Administrator an assessment of the Maryland ambient air monitoring network every five years to determine, at a minimum, if the network meets the monitoring objectives defined in 40 C.F.R., Part 58, Appendix D, whether new sites are needed, whether existing sites are no longer needed and can be terminated, and whether new technologies are appropriate for incorporation into the network.

Maryland has and will continue to submit data to EPA's Air Quality System (AQS), as required by 40 CFR 51.320, "Annual air quality data report." MDE collects and reports to EPA all ambient air quality data and associated quality assurance data for PM<sub>2.5</sub>. The reports comply with the federal

<sup>9</sup> See 42 U.S. Code 7410(a)(2)(B).

<sup>10</sup> See Appendix B for EPA Approval Letter (November 12, 2015).

requirements of 40 CFR 58.16, “Data submittal and archiving requirements” (July 1, 2012). As necessary, the submitted data is reviewed, edited, validated, and entered into the AQS for updating pursuant to prescribed AQS procedures. The state is required by 40 CFR 58.16 to report this data to the EPA AQS within 90 days after the end of each quarterly reporting period.

### **Clean Air Act § 110(a)(2)(C)**

**§ 110(a)(2)(C), Program for Enforcement of Control Measures and for Construction or Modification of Stationary Sources:** *Each such plan shall – (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.*<sup>11</sup>

Note: In accordance with EPA guidance, infrastructure SIPs are to include the preceding requirements, with the exception of the NNSR permitting program, which is to be addressed in a different SIP.<sup>12</sup>

With the exception of its Vehicle Emissions Inspection Program, Maryland’s statutory provisions for the enforcement of the provisions described in §110(a)(2)(A) of the Clean Air Act are found at §§2-601—614 of the Environment Article of the Annotated Code of Maryland. Specific enforcement provisions for the items under §110(a)(2)(A), above, may also be found in SIP approved portions of COMAR 26.11.

In addition to the enforcement provisions in §§2-601—614 of the Environment Article, Annotated Code of Maryland, §2-1005 of the Environment Article, Annotated Code of Maryland, contains enforcement provisions pertaining specifically to the requirements of the Maryland Healthy Air Act (“HAA”)<sup>13</sup>. The HAA was developed with the purpose of bringing Maryland into attainment with earlier National Ambient Air Quality Standards (NAAQS) for ozone and fine particulate matter.

Maryland’s provisions for the enforcement of its Vehicle Emissions Inspection Program are found in §23-207 of Title 23 of the Transportation Article of the Annotated Code of Maryland, with implementing regulations at COMAR 11.14.08.08. Pursuant to COMAR 11.14.08.08A, such enforcement is administered by the Motor Vehicle Administration, which is part of the Maryland Department of Transportation.

Maryland's permit to construct requirements are found in COMAR 26.11.02.12 and 26.11.06.04, which contains procedures for obtaining minor NSR permits and which contains enforcement provisions for violations of permits to construct, PSD approvals, and operating permits, respectively.

<sup>11</sup> See 42 U.S. Code 7410(a)(2)(C).

<sup>12</sup> See U.S. Environmental Protection Agency, “Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under Sections 110(a)(1) and 110(a)(2)” for the 2008 Ozone NAAQS, the 2010 Nitrogen Dioxide NAAQS, the 2010 Sulfur Dioxide NAAQS, and the 2012 Fine Particulate Matter (PM<sub>2.5</sub>) NAAQS Memorandum from Stephen D. Page, Office of Air Quality Planning and Standards (Washington, DC: U.S. Environmental Protection Agency, September 13, 2013).

<sup>13</sup> See the Annotated Code of Maryland, Environment Article; Title 2. Ambient Air Quality Control; Subtitle 10. Health Air Act; Sections 2-1001 - 2-1005.

Maryland's Title V permits are under COMAR 26.11.03. This chapter of COMAR also includes provisions providing for enforcement of Title V permits (COMAR 26.11.03.21, "General Part 70 Permits"). Note that the COMAR 26.11.03 is not part of Maryland's EPA-approved SIP and is mentioned here just for reference purposes.

COMAR 26.11.06.14 also contains pre-construction permitting requirements for PSD sources. Related definitions are found in COMAR 26.11.01.01B(37).

COMAR 20.79, "Applications Concerning the Construction or Modification of Generating Stations and Overhead Transmission Lines," particularly the EPA SIP-approved portions of this chapter, regulate construction and modification (and permitting) of electric generating stations, including consideration of related air quality impacts in attainment and nonattainment areas.

Statutory provisions also establish requirements for construction and modification of generating stations. See the EPA SIP-approved portions of the following sections of the Public Utilities Article, Annotated Code of Maryland:

- § 7-205, Electric companies -- Modification of power plant
- § 7-207, Generating stations or transmission lines -- General certification procedure
- § 7-208, Generating stations or transmission lines -- Joint construction of station and associated lines

## Clean Air Act § 110(a)(2)(D)

**§ 110(a)(2)(D)(i)(I) and (II) –Interstate Pollution Transport:** Each such plan shall – (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.<sup>14</sup>

### § 110(a)(2)(D)(i)(I)

Maryland meets the §110(a)(2)(D)(i)(I) good neighbor obligations. The regulations already in the SIP, including those specifically mentioned in the section addressing 110(a)(2)(A), help MDE meet its good neighbor requirements by prohibiting sources' emissions from being emitted at levels which would contribute significantly to nonattainment or interfere with maintenance by another state with the PM<sub>2.5</sub> NAAQS. For nonattainment areas, Maryland has implemented numerous planning requirements designed to achieve compliance with the NAAQS.

In 2006, Maryland enacted the Healthy Air Act (“HAA”), codified at §§ 2-1001-1005 of the Environment Article, Annotated Code of Maryland, and adopted implementing regulations at COMAR 26.11.27. The HAA requires reductions in total emissions of SO<sub>2</sub>, NO<sub>x</sub>, and mercury from certain electric generating plants in the state. The HAA helps to address Maryland’s emissions contribution to many downwind areas such as Pennsylvania, Delaware, Connecticut, and New Jersey. The HAA emissions reductions were based on Best Available Control Technology (BACT) rates for the affected EGU units in the state.

Maryland submitted its Regional Haze State Implementation Plan to EPA on February 13, 2012, and EPA gave final approval to the plan on July 6, 2012 (77 FR 39938), effective date August 6, 2012. Implementation of this SIP is reducing particulate matter and its precursors SO<sub>2</sub> and NO<sub>x</sub>, from Maryland’s Best Available Retrofit Technology (BART) sources.

According to EPA’s Memorandum of March 17, 2016 “Information on the Interstate Transport “Good Neighbor” Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I)” and Attachment 1 (page 7), the only monitor in the eastern half of the country with projected 2017 and 2025 average/maximum future year annual PM<sub>2.5</sub> design values at or above the PM<sub>2.5</sub> 2012 NAAQS is in Allegheny County, PA.<sup>15</sup> The other monitors are located in the Western half of the country in California and Idaho and are not likely impacted by Maryland emissions. The monitor in Allegheny Co, PA is likely effected generally by local air quality issues in the western PA Allegheny County Area. See EPA’s action on designations in the January 15, 2015 federal register at 80 FR 2206 and especially the Pennsylvania TSD supporting EPA’s action making Allegheny County, PA a moderate nonattainment area for the 2012 PM<sub>2.5</sub> NAAQS which is contained in the docket # EPA–HQ–OAR–2012–0918 for this action. Thus, after reviewing EPA’s earlier action and EPA’s most recent memo, attachments, and projected modeling on the “good neighbor provisions” for this NAAQS,

<sup>14</sup> See 42 U.S. Code 7410(a)(2)(D)(i)(I) and (II).

<sup>15</sup> <https://www3.epa.gov/pm/pdfs/good-neighbor-memo.pdf>.

and Maryland concludes its sources are not significantly contributing to nonattainment nor interfering with maintenance in another state. Therefore, Maryland's SIP approved measures as mentioned for CAA 110(a)(2)(A) are adequate provisions to address CAA 110(a)(2)(D)(i)(I) and prevent Maryland sources from significantly contributing to nonattainment or interfering with maintenance in another state.

#### (D)(i)(II) Visibility and Prevention of Significant Deterioration (PSD)

As indicated below, Maryland is addressing the visibility and PSD requirements under CAA Sec. 110(a)(2)(D)(i)(II) with fully SIP approved provisions:

- Maryland's procedures for obtaining approvals of PSD sources and NSR sources, certain permits to construct, and case-by-case MACT determinations are found in COMAR 26.11.02.12.
- Maryland's PSD requirements are found in COMAR 26.11.06.14 and additional provisions implementing the EPA's final PSD and Title V Greenhouse Gas Tailoring Rule (75 FR 31514, June 3, 2010) are under COMAR 26.11.01.01, COMAR 26.11.02.01, and COMAR 26.11.02.12.
- Maryland's PSD regulations are in COMAR 26.11.06.14 and COMAR 26.11.01.01B(37) to refer to any new or modified source subject to the provisions of 40 CFR 52.21, as amended.
- COMAR 20.79, "Applications Concerning the Construction or Modification of Generating Stations and Overhead Transmission Lines," particularly the EPA SIP-approved portions of this chapter, regulate construction and modification of electric generating stations, including consideration of related air quality impacts.

The statutory provisions below establish requirements for construction and modification of generating stations, including consideration of related air quality impacts. See the EPA SIP-approved portions of the following sections of the Public Utilities Article, Annotated Code of Maryland:

- § 7-205, Electric companies -- Modification of power plant
- § 7-207, Generating stations or transmission lines -- General certification procedure
- § 7-208, Generating stations or transmission lines -- Joint construction of station and associated lines

Maryland submitted its Regional Haze State Implementation Plan to EPA on February 13, 2012, and EPA gave final approval to the plan on July 6, 2012 (77 FR 39938), effective date August 6, 2012. As per EPA's guidance, the approved regional haze plan meets visibility requirements for this portion of D(i)(II).

#### (D) (ii) Interstate Pollution Abatement and International Air Pollution

**§ 110(a)(2)(D)(ii) –Interstate Pollution Abatement and International Air Pollution:** *Each such plan shall – (D) contain adequate provisions – (ii) insuring compliance with the applicable requirement of sections 126 and 115 (relating to interstate and international pollution abatement)*

*Interstate Pollution Abatement:*

*Sec. 126. (a) Each applicable implementation plan shall – (1) require each major proposed new (or modified) source – (A) subject to part C (relating to significant deterioration of air quality) or (B) which may significantly contribute to levels of air pollution in excess of national ambient air quality standards in any air quality control region outside the State in which such source intends to locate (or make such modification), to provide written notice to all nearby States the air pollution levels of which may be affected by such source at least sixty days prior to the date on which commencement of construction is to be permitted by the State providing notice, and (2) identity all major existing stationary sources which may have the impact described in paragraph (1) with respect to new or modified sources and provide notice to all nearby States of the identity of such sources not later than three months after the date of enactment of the Clean Air Act Amendments of 1977.*

*Section 126... (b) Any State or political subdivision may petition the Administration for a finding that any major source or group of stationary sources emits or would emit any air pollutant in violation of the prohibition of section 110(A)(2)(D)(ii) or this section. Within 60 days after receipt of any petition under this subsection and after public hearing, the Administrator shall make such a finding or deny the petition. (c) Notwithstanding any permit which may have been granted by the State in which the source is located (or intends to locate), it shall be a violation of [this section and] the prohibition of section 110(a)(2)(D)(ii) of this section, or (2) for any major existing source to operate more than three months after such finding has been made with respect to it. The Administrator may permit the continued operation of a source referred to in paragraph (2) beyond the expiration of such three-month period if such source complies with such emission limitations and compliance schedules (containing increments of progress) as may be provided by the Administrator to bring about compliance with the requirements contained in section 110(a)(2)(D)(ii) as expeditiously as practicable, but in no case later than three years after the date of such finding. Nothing in the preceding sentence shall be construed to preclude any such source from being eligible for an enforcement order under section 113(d) after the expiration of such period during which the Administrator has permitted continuous operation*

*International Air Pollution:*

*Sec. 115. (a) Whenever the Administrator, upon receipt of reports, surveys or studies from any duly constituted international agency has reason to believe that any air pollutant or pollutants emitted in the United States cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country or whenever the Secretary of State requests him to do so with respect to such pollution which the Secretary of State alleges is of such a nature, the Administrator shall give formal notification thereof to the Governor or the State in which such emissions originate. (b) The notice of the Administrator shall be deemed to be a finding under section 110(a)(2)(H)(ii) which requires a plan revision with respect to so much of the applicable implementation plans as is inadequate to prevent or eliminates the endangerment referred to in subsection (a). Any foreign country so affected by such emission of pollutant or pollutants shall be invited to appear at any public hearing associated with any revision of the appropriate portion of the applicable implementation plan.<sup>16</sup>*

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<sup>16</sup> See 42 U.S. Code 7410(a)(2)(D)(ii).

### **§126(a)**

Maryland has procedures for obtaining approvals of PSD sources and NSR sources in Maryland.

- In COMAR 26.11.02.12F, Maryland requires applicants for approval of PSD sources, new source review (NSR) sources, and certain permits to construct to publish a notice of the opportunity to submit public comments and to request a public hearing.
- In COMAR 26.11.16.14, Maryland identifies the CFR relevant to control PSD sources.
  - B. General Requirements maintains that a person may not construct, modify, or operate, or cause to be constructed, modified, or operated, a PSD source, which will result in violation of any provision of 40 CFR §52.21.
  - The reviewing authority is the Department instead of the Administrator unless other specified in 40 CFR §52.1116. The applicable procedures are those set forth in COMAR 26.11.02.
- Additional provisions implementing the EPA’s final PSD and Title V Greenhouse Gas Tailoring Rule (75 FR 31514, June 3, 2010) are in COMAR 26.11.01.01, COMAR 26.11.02.01, and COMAR 26.11.02.12.

### **§126(b) and (c)**

No source or sources within Maryland are subject to an active finding under section 126 of the Clean Air Act with respect to the particular NAAQS at issue.<sup>17</sup>

### **§115**

There are no final findings under section 115 of the CAA against Maryland with respect to the particular NAAQS at issue.<sup>18</sup>

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<sup>17</sup> See U.S. Environmental Protection Agency, “Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under Sections 110(a)(1) and 110(a)(2)” for the 2008 Ozone NAAQS, the 2010 Nitrogen Dioxide NAAQS, the 2010 Sulfur Dioxide NAAQS, and the 2012 Fine Particulate Matter (PM2.5) NAAQS Memorandum from Stephen D. Page, Office of Air Quality Planning and Standards (Washington, DC: U.S. Environmental Protection Agency, September 13, 2013) (page 38).

<sup>18</sup> See U.S. Environmental Protection Agency, “Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under Sections 110(a)(1) and 110(a)(2)” for the 2008 Ozone NAAQS, the 2010 Nitrogen Dioxide NAAQS, the 2010 Sulfur Dioxide NAAQS, and the 2012 Fine Particulate Matter (PM2.5) NAAQS Memorandum from Stephen D. Page, Office of Air Quality Planning and Standards (Washington, DC: U.S. Environmental Protection Agency, September 13, 2013) (page39).

## Clean Air Act §§ 110(a)(2)(E)

**§ 110(a)(2)(E), Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies:** *Each such plan shall – (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 an 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 128, and (ii) 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.*<sup>19</sup>

### (E)(i) Adequate Resources (Legal, Personnel, and Funding)

#### Legal

The following statutory provisions authorize MDE, along with the PSC, to develop and implement the Maryland PM<sub>2.5</sub> SIP:

- Authority for MDE to obtain federal and state funds available for purposes within the scope of Title 2, “Ambient Air Quality,” of the Environment Article of the Annotated Code of Maryland: §2-103(a), Environment Article.
- MDE’s jurisdiction over emissions into the air and ambient air quality in the State, responsibility for monitoring ambient air quality in the State, and coordinating all State agency programs on ambient air quality control: Environment Article, §§2-103(b)(1)-(3), Annotated Code of Maryland.
- Authority for MDE to advise the Governor when an air pollution emergency exists: Environment Article, §2-105, Annotated Code of Maryland.
- Authority for MDE to adopt regulations that establish standards and procedures to be followed whenever pollution of the air reaches an emergency condition: Environment Article, §2-301(a)(2), Annotated Code of Maryland.
- Air Quality Control Advisory Council which is used as a consultation advice for MDE regarding proposed regulations: Environment Article, §§ 2-201-206, Annotated Code of Maryland.
- Authority for MDE to adopt rules and regulations for the control of air pollution in the State, including testing, monitoring, record keeping, and reporting requirements: Environment Article, §2-301(a)(1), Annotated Code of Maryland.

<sup>19</sup> See 42 U.S. Code 7410(a)(2)(E)(i), (ii), and (iii).

- Authority for MDE to set emission standards and ambient air quality standards for each air quality control area in the State: Environment Article, §2-302 (a)-(d), Annotated Code of Maryland.
- Authority for MDE to enforce the standards and impose penalties: Environment Article, §§2-601-614, Annotated Code of Maryland.
- Authority for the Public Service Commission to supervise and regulate public service companies (such as electric and gas companies), including consideration of the preservation of environmental quality: §§ 2-112, 2-113, 2-117, and 2-121 of the Public Utilities Article, Annotated Code of Maryland.
- Authority for the Maryland Department of Natural Resources to establish the Power Plant Research Program; also establishes the purview of PPRP's work which includes, for example, research regarding the impacts of air pollutants from power plants on public health and welfare and related modeling, and an environmental evaluation of power plant sites proposed for future development and expansion: § 3-303 of the Natural Resources Article, Annotated Code of Maryland.

### **Personnel**

Maryland Department of the Environment's (MDE) Air and Radiation Management Administration (ARMA) currently has 43 personnel on staff in its air and support/operational services programs involved with carrying out various aspects of the SIP with respect to PM<sub>2.5</sub> requirements. This staff carries out various requirements of the PM<sub>2.5</sub> SIP.

### **Funding**

Maryland's descriptions of resources needed to carry out the plan are detailed below. During the 5 year period following the submission of this i-SIP, the following projects are the anticipated sources of the extent to which resources will be accrued at 1-, 3-, and 5-year intervals.

#### **1-, 3-, and 5- Year Funding**

- Maryland receives Section 105 and 103 grants annually. These grants include funds for implementation of the PM<sub>2.5</sub> SIP, including SIP development and PM<sub>2.5</sub> monitoring. The State and EPA negotiate the 105 grants each year, and the state is required to carry out certain obligations for the 105 grant, including providing matching funds.
- Title V permit fees are collected under the authority § 2-403 of the Environment Article, Annotated Code of Maryland and pursuant to COMAR 26.11.02.16, .17, and .19. These fees are used to fund programs such as the permitting of new and existing sources of air pollution, compliance and enforcement of sources of air pollution, and monitoring of ambient air quality in the State. This includes program development and PM<sub>2.5</sub> plan implementation.
- MDE receives annual funding from the State of Maryland's Environmental Trust Fund via the Maryland Department of Natural Resources (DNR), which administers the fund. These funds are used if Maryland needs to conduct air quality modeling.

- The Power Plant Research Program (PPRP) at the Maryland DNR is financed by the Environmental Trust Fund, which is comprised of the revenues from an environmental surcharge that is assessed on all electricity consumers. PPRP conducts a technical review of applications for citing and modification of power plants and conducts research regarding the impacts of power plants on air quality.
- The Maryland Public Service Commission collects application fees for Certificates of Public Convenience and Necessity (CPCN) for power plants. These fees pay the cost of the PSC program to regulate the power plants.

(E)(ii) Boards

Maryland does not have any board or body which approves air quality permits or enforcement orders; these are the sole responsibility of the Maryland Department of the Environment, except in the case of Certificates of Public Convenience and Necessity (CPCN). These are the pre-construction permits for utility installations which are issued by the Maryland Public Service Commission, an independent agency of the State.

Maryland's SIP at 40 CFR Part 52 Subpart V meets the provisions of CAA §§ 110(a)(2)(E)(ii) and section 128 related to the disclosure of potential conflicts of interest of the officials who may issue permits and/or enforcement orders at the Maryland Department of the Environment and the Maryland Public Service Commission.

(E)(iii) Reliance on Local Units of Government

Maryland does not rely on local or regional government agencies or instrumentality for specific SIP implementation.

**Clean Air Act § 110(a)(2)(F)**

**§ 110(a)(2)(F), Stationary Source Monitoring and Reporting:** *Each such plan shall – (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.<sup>20</sup>*

(F)(i) Stationary Source Monitoring Equipment

The following Maryland statutory provisions give MDE authority for requiring air emissions monitoring by sources in the State of Maryland and adopting regulations to control air pollution, including testing, monitoring, record keeping, and emissions reporting requirements:

- §2-103 Environment Article, Annotated Code of Maryland.
- §2-301 Environment Article, Annotated Code of Maryland.

The following Maryland regulations require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by stationary sources to monitor their emissions:

<b>COMAR Subtitle/Chapter</b>	<b>Chapter/Regulation Name</b>	<b>PM<sub>2.5</sub> and Precursors of PM<sub>2.5</sub></b>
COMAR 26.11.01	Testing and Monitoring & Continuous Emissions Monitoring (CEM) Requirements	.04, .10
COMAR 26.11.09	Control of Particulate Matter & Control of NOx Emissions from Major Stationary Sources	.06, .08
COMAR 26.11.09	Standards for Biomass Fuel-Burning Equipment Equal to or Greater Than 350,000 Btu/hr.	.12
COMAR 26.11.10	Testing and Observation Procedures.	.07
COMAR 26.11.27	Monitoring and Reporting Requirements.	.05

<sup>20</sup> See 42 U.S. Code 7410(a)(2)(F).

(F)(ii) Stationary Source Monitoring Reports

The Maryland SIP regulations below (approved under 40 CFR 52.1070(c), unless otherwise noted) include stationary source emissions monitoring and periodic emissions reports. These regulations address the requirements under 40 CFR Part 51.211, “Emissions reports and recordkeeping”; 40 CFR 51.212, “Testing, inspection, enforcement, and complaints”; and 40 CFR Part 51, subpart A, “Air Emissions Reporting Requirements.”

- COMAR 26.11.01.04, “Testing & Monitoring”
- COMAR 26.11.01.05, “Records and Information”
- COMAR 26.11.01.05-1, “Emission Statements”
- COMAR 26.11.01.07, “Malfunctions & Other Temporary Increases in Emissions”
- COMAR 26.11.01.10, “Continuous Emission Monitoring (CEM) Requirements”
- COMAR 26.11.03.03, “Information Required as Part of Application for a Part 70 Permit.” This regulation is not included in Maryland’s SIP-approved regulations but is included here for reference.
- COMAR 26.11.27.05, Emissions Limitations for Power Plants, Monitoring and Reporting Requirements

(F)(iii) Reports, State Role, and Public Notification

The Maryland provisions below address these requirements to make reports with emission limitations or standards available to the public. Note that EPA has SIP-approved the provisions below unless otherwise indicated.

- §2-103(b), Environment Article, Annotated Code of Maryland, gives MDE statutory authority over emissions into the air, ambient air quality, and ambient air quality monitoring. This statute has not been SIP approved and is mentioned here for reference purposes only.
- COMAR 26.11.01.05, “Records and Information,” requires sources to establish and maintain records, for purposes such as allowing MDE to determine compliance with an emissions standard.
- COMAR 26.11.01.04, B(4) states, “All records and reports submitted to the Department or the control officer required under this regulation [“Testing and Monitoring”] shall be available for public inspection.”
- Criteria pollutant emissions-related data in Maryland is available to the public for inspection upon request, in accordance with 40 CFR 51.116, “Data Availability.” This regulation states the following:
  - (c) Each plan must provide for public availability of emission data reported by source owners or operators or otherwise obtained by a State or local agency. Such emission data must be correlated with applicable emission limitations or other measures. As used in this paragraph, correlated means presented in such a manner as to show the relationship between measured or estimated amounts of emissions and the amounts of such emissions allowable under the applicable emission limitations or other measures.

## Clean Air Act § 110(a)(2)(G)

*§ 110(a)(2)(G), Emergency Powers: Each such plan shall – (G) provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority.<sup>21</sup>*

Below are the statutory and regulatory provisions that provide authority comparable to that of the EPA Administrator under section 303.

- Environment Article, §2-105, Annotated Code of Maryland: provides the authority to address activities causing imminent and substantial endangerment to public health or welfare, or the environment.
- §2-301 of the Environment Article, Annotated Code of Maryland provides the authority to adopt rules and regulations in an air quality emergency condition.
- “Air Pollution Episode System” and “Standby Emission Reduction Plans,” in COMAR 26.11.05.03 and COMAR 26.11.05.04, respectively, in the Maryland SIP under 40 CFR 52.1070(c) provide the authority to activate emergency episode stages, and to initiate standby emission reduction plans, respectively.
- Environment Article, §2-604 (Administrative corrective order authority) and § 2-609 (a) (Civil injunctive authority), Annotated Code of Maryland provides the authority regarding accidental or other releases that are not authorized by statute, regulation or permit or occur in conjunction with violations of existing regulatory requirements.

EPA has not set levels for the priority areas and has not set a significant harm level for any PM<sub>2.5</sub> NAAQS. However, for the 24-hour 2006 PM<sub>2.5</sub> NAAQS, EPA recommended these levels through guidance.<sup>22</sup> In the September 25, 2009 Guidance for the 2006 PM<sub>2.5</sub> NAAQS, EPA suggested that states that had monitored and recorded 24-hour PM<sub>2.5</sub> levels greater than 140.4 µg/m<sup>3</sup>, using the most recent three years of data, should develop emergency episode plans for the areas with the monitored values. EPA also suggested that, if these levels had not been exceeded, states could certify that they had adequate general emergency authority to address PM<sub>2.5</sub> episodes. Based on a review of the most recent certified data for the years 2012-2014, Maryland continues to meet this recommended criterion for PM<sub>2.5</sub>. The maximum 24 hour level of PM<sub>2.5</sub> in the entire state during that time period was 45.7 µg/m<sup>3</sup> which occurred at the Hagerstown, Washington County monitor (AQS #240430009) on December 3, 2013. Since the PM<sub>2.5</sub> levels are below 140.4 µg/m<sup>3</sup>, the state does not need an emergency episode plan and has adequate general emergency authority to address any PM<sub>2.5</sub> episodes.

<sup>21</sup> See 42 U.S. Code 7410(a)(2)(G).

<sup>22</sup> See Memorandum from William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality and Planning Standards, to Regional Air Division Directors, Regions I through X, “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS).” (September 25, 2009 Guidance). This guidance can be found at this link: [http://www.epa.gov/ttn/caaa/t1/memoranda/20090925\\_harnett\\_pm25\\_sip\\_110a12.pdf](http://www.epa.gov/ttn/caaa/t1/memoranda/20090925_harnett_pm25_sip_110a12.pdf).

## Clean Air Act § 110(a)(2)(H)

**§ 110(a)(2)(H), SIP Revisions:** *Each such plan shall – (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 attain such standard and (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 requirement established under this chapter.*<sup>23</sup>

Maryland's SIP is essentially a compilation of regulations, source-specific provisions and plans to meet the National Ambient Air Quality Standards (NAAQS). The authority to develop or revise a SIP is based on the authority to adopt new regulations and revise existing regulations to meet the NAAQS (§2-301(a)(1) Environment Article, Annotated Code of Maryland), and more, specifically in §2-302 of the Environment Article, Annotated Code of Maryland (authority to set emission standards and air quality control areas, as well as ambient air quality standards).

Nothing in Maryland's statutory or regulatory authority prohibits the State from revising the SIP when the NAAQS are revised by EPA.

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<sup>23</sup> See 42 U.S. Code 7410(a)(2)(H).

## Clean Air Act § 110(a)(2)(J)

**§ 110(a)(2)(J), Consultation with Government Officials, Public Notification, and PSD and Visibility Protection:** *Each such plan shall – (J) meet the applicable requirement of section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection)*

**(J) Consultation with identified officials on certain actions:**

*Sec. 121. In carrying out the requirement of this Act requiring applicable implementation plans to contain – (1) any transportation controls, air quality maintenance plan requirements or preconstruction review of direct sources of air pollution, or (2) any measure referred to – (A) in part D (pertaining to nonattainment requirements), or (B) in part C (pertaining to prevention of significant deterioration), and in carrying out the requirements of section 113(d) (relating to certain enforcement orders), the State shall provide a satisfactory process of consultation with general purpose local governments and any Federal land manager having authority over Federal land to which the State plan applies, effective with respect to any such requirement which is adopted more than one year after the date of enactment of the Clean Air Act Amendments of 1977 as part of such plan. Such process shall be in accordance with regulation promulgated by the Administrator to assure adequate consultation. The Administrator shall update as necessary the original regulations required and promulgated under this section (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990) to ensure adequate consultation. Only a general purpose unit of local government, regional agency, or council of government adversely affected by action of the Administrator approving any portion of a plan referred to in this subsection may petition for judicial review of such action on the basis of a violation of the requirements of this section.<sup>24</sup>*

### (J) Consultation with Identified Official on Certain Actions:

Maryland has formal consultation procedures in place that are adapted to serve multiple pollutants and processes. These processes address the consultation requirements for the purposes of §121 of the Clean Air Act.

COMAR 26.11.26 provides the structure for a consultation process between the Maryland Department of the Environment (MDE), Maryland Department of Transportation (MDOT), and Metropolitan Planning Organizations (MPOs). This consultation process is for analyzing the conformity of transportation plans and projects with the State Implementation Plan, and for giving transportation agencies the opportunity to provide comment on the SIP. Overall, the MPOs provide a forum for consultation with local governments. Maryland's MPOs located in nonattainment areas are as follows:

- Baltimore Regional Transportation Board (BRTB)
- National Capital Transportation Planning Board (TPB) for the Washington region
- Wilmington Area Planning Council (WILMAPCO)
- Hagerstown/Eastern Panhandle Metropolitan Planning Organization (HEPMPO)

Maryland also addresses the consultation requirements of CAA §121 through the regulatory and statutory provisions listed under “(J) Public notification,” below, as addressing CAA §127. This

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<sup>24</sup> See 42 U.S. Code 7410(a)(2)(J).

includes the provisions shown below for public hearings, public notices, and public notifications of air quality alerts and warnings.

#### (J) Public Notification

**(J) Public Notification:**

*Section 127. (a) Each State plan shall contain measure which will be effective to notify the public during any calendar [year] on a regular basis of instances or areas in which any national primary ambient air quality standard is exceeded or was exceeded during any portion of the preceding calendar year to advise the public of the health hazards associated with such pollution, and to enhance public awareness of the measure which can be taken to prevent such standards from being exceeded and the ways in which the public can participate in regulatory and other efforts to improve air quality. Such measures may include the posting of warnings signs on interstate highway access point to metropolitan areas or television, radio, or press notices or information. (b) The Administrator is authorized to make grants to States to assist in carrying out the requirements of subsection (a)*<sup>25</sup>.

Public hearings on proposed Maryland regulations are held in accordance with the following statutory provisions, not currently in the Maryland SIP:

- Section 2-303(b), Environment Article, Annotated Code of Maryland; this requires public hearings to be held before adopting air quality regulations.
- Subtitle 1 of Title 10, State Government Article, Annotated Code of Maryland; this sets forth the administrative procedure requirements for adopting or modifying regulations, including public notification and participation requirements.
- Public hearings on proposed Maryland regulations are also held in accordance with EPA requirements under 40 CFR §51.102.

Public notice is addressed in the following regulatory and statutory provisions:

- COMAR 26.11.02, “Permits, Approvals, and Registration.”
- The Maryland SIP-approved portions of COMAR 26.11.02.11, “Procedures for Obtaining Permits to Construct Certain Significant Sources.”
- COMAR 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.”
- The EPA SIP-approved portions of the statutory provisions, § 7-207, “Generating stations or transmission lines -- General certification procedure,” and § 7-208, “Generating stations or transmission lines -- Joint construction of station and associated lines,” Public Utilities Article, Annotated Code of Maryland, establish requirements for construction and modification of generating stations. This includes consideration of related air quality impacts, and including requirements for the Commission to provide public notices.

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<sup>25</sup> See 42 U.S. Code 7410(a)(2)(J).

Public notification of air quality alerts and warnings is provided in the following regulations:

- COMAR 26.11.04.02, “Ambient Air Quality Standards, Definitions, Reference Conditions, and Methods of Measurement,” adopts 40 CFR 58.50, “Index reporting,” which reports air quality to the public several times a day.
- COMAR 26.11.05.03, “Air Pollution Episode Criteria,” in the chapter “Air Pollution Episode System,” which justify the proclamation of a Standby Watch, Health Advisory, Alert Warning, or Emergency.

Maryland also provides public access to all air monitoring data via the Internet, as required under Section 2-103, Environment Article, Annotated Code of Maryland.

#### (J) PSD and Visibility Protection

*(J) PSD and Visibility Protection requires states to meet applicable requirements of Part C [of Title I of the Clean Air Act] related to prevention of significant deterioration and visibility protection.<sup>26</sup>*

- Maryland's PSD requirements are found in COMAR 26.11.06.14. Additional provisions implementing the EPA's final PSD and Title V Greenhouse Gas Tailoring Rule (75 FR 31514, June 3, 2010, amending 40 CFR Parts 51, 52, 70, and 71) are under COMAR 26.11.01.01, COMAR 26.11.02.01, and COMAR 26.11.02.12.
- In 2013, Maryland revised its “PSD sources” regulations in COMAR 26.11.06.14 and COMAR 26.11.01.01B(37) to refer to any new or modified source subject to the provisions of 40 CFR 52.21, as amended.
- COMAR 20.79, “Applications Concerning the Construction or Modification of Generating Stations and Overhead Transmission Lines,” particularly the EPA SIP-approved portions of this chapter, regulate construction and modification of electric generating stations, including consideration of related air quality impacts. This chapter also incorporates by reference Maryland's PSD regulations found in COMAR 26.11. See COMAR 20.79.01.06.

The statutory provisions below establish requirements for construction and modification of generating stations, including consideration of related air quality impacts. See the EPA SIP-approved portions of the following sections of the Public Utilities Article, Annotated Code of Maryland:

- § 7-205, Electric companies -- Modification of power plant
- § 7-207, Generating stations or transmission lines -- General certification procedure
- § 7-208, Generating stations or transmission lines -- Joint construction of station and associated lines

The EPA believes that there are no new visibility protection requirements under part C as a result of a revised NAAQS. Therefore, there are no newly applicable visibility protection obligations

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<sup>26</sup> See 42 U.S. Code 7410(a)(2)(J).

pursuant to Element J after the promulgation of a new or revised NAAQS. Air Agencies do not need to address the visibility subelement J in an infrastructure SIP submission. Therefore, there are no newly applicable visibility protection obligations pursuant to Element J after the promulgation of a new or revised NAAQS.<sup>27</sup>

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<sup>27</sup> See U.S. Environmental Protection Agency, “Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under Sections 110(a)(1) and 110(a)(2)” for the 2008 Ozone NAAQS, the 2010 Nitrogen Dioxide NAAQS, the 2010 Sulfur Dioxide NAAQS, and the 2012 Fine Particulate Matter (PM<sub>2.5</sub>) NAAQS Memorandum from Stephen D. Page, Office of Air Quality Planning and Standards (Washington, DC: U.S. Environmental Protection Agency, September 13, 2013), page 34.

## Clean Air Act § 110(a)(2)(K)

*§ 110(a)(2)(K), Air Quality Modeling and Submission of Modeling Data: Each such plan shall – (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.<sup>28</sup>*

### Air Quality Modeling and Data:

- Authority under §2-103 and §2-302 of the Environment Article, Annotated Code of Maryland.
- Authority under EPA SIP-approved portions of §§ 7-205, 7-207, 7-207.1, and 7-208 of the Public Utilities Article, Annotated Code of Maryland.
- COMAR 26.11.06.14, “Control of PSD Sources,” Maryland’s PSD program, is consistent with the federal PSD requirements and accordingly, addresses the PSD modeling requirements under §110(a)(2)(K).
- The EPA SIP-approved portions of COMAR 20.79.01, .02, and .03, in the subtitle, “Applications Concerning the Construction or Modification of Generating Stations and Overhead Transmission Lines,” establish, for example, requirements for the calculation of increases in air emissions related to modifications of facilities at power plants. COMAR 20.79.01.06 incorporates by reference Maryland’s PSD regulations found in COMAR 20.79.03.02 which establishes requirements for applications, regarding construction and modification of generating stations, to demonstrate compliance with environmental restrictions. This includes providing the following information to show the impact on air quality: (1) ability of the generating station to comply with PSD and NSR provisions; and (2) the impact on PSD areas.
- As Maryland has done in the past, it can provide a modeling analysis to assess the effect of the state's air emissions on the NAAQS. Past examples include modeling for 8-hour ozone and other PM<sub>2.5</sub> SIPs.

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<sup>28</sup> See 42 U.S. Code 7410(a)(2)(K).

## Clean Air Act § 110(a)(2)(L)

**§ 110(a)(2)(L), Permitting fees: Each such plan shall – (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.<sup>29</sup>**

Maryland’s Title V program is found under COMAR 26.11.03, with regulations on the collection of fees located under COMAR 26.11.02.16, “Permit Fees” in the chapter “Permits, Approvals, and Registration Authority.” EPA approved Maryland’s Title V program, effective February 14, 2003 (see 68 Fed. Reg. 1974, January 15, 2003). Maryland’s Title V program fulfills the requirements of § 110(a)(2)(L), superseding the individual requirements of § 110(a)(2)(L)(i) and (ii), above. The Title V program fees cover reasonable costs to review and act on permits and enforce terms and conditions of any such permit. Note that COMAR 26.11.03 is not part of Maryland’s EPA-approved SIP and is mentioned here for reference purposes only.

§ 2-403 – “Permits or registration - Fees,” Environment Article, Annotated Code of Maryland also addresses the requirements §110(a)(2)(L).

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<sup>29</sup> See 42 U.S. Code 7410(a)(2)(L).

## Clean Air Act § 110(a)(2)(M)

***§110(a)(2)(M), Consultation and Participation by Affected Local Entities:*** Each such plan shall – (M) provide for consultation and participation by local political subdivisions affected by the plan.<sup>30</sup>

The statutory authority is located under §2-103 and §2-302 of the Environment Article, Annotated Code of Maryland.

Maryland has formal consultation procedures in place that are adapted to serve multiple pollutants and processes. These processes address the consultation requirements for the purposes of §121 of the Clean Air Act.

COMAR 26.11.26 provides the structure for a consultation process between the Maryland Department of the Environment (MDE), Maryland Department of Transportation (MDOT), and Metropolitan Planning Organizations (MPOs). This consultation process is for analyzing the conformity of transportation plans and projects with the State Implementation Plan, and for giving transportation agencies the opportunity to provide comment on the SIP. Overall, the MPOs provide a forum for consultation with local governments. Maryland's MPOs located in nonattainment areas are as follows:

- Baltimore Regional Transportation Board (BRTB)
- National Capital Transportation Planning Board (TPB) for the Washington region
- Wilmington Area Planning Council (WILMAPCO)
- Hagerstown/Eastern Panhandle Metropolitan Planning Organization (HEPMPO)

Public hearings on proposed Maryland regulations are held in accordance with the following statutory provisions, not currently in the Maryland SIP:

- Section 2-303(b), Environment Article, Annotated Code of Maryland; this requires public hearings to be held before adopting air quality regulations.
- Subtitle 1 of Title 10, State Government Article, Annotated Code of Maryland; this sets forth the administrative procedure requirements for adopting or modifying regulations, including public notification and participation requirements.
- Public hearings on proposed Maryland regulations are also held in accordance with EPA requirements under 40 CFR §51.102.

Public notice is addressed in the following regulatory and statutory provisions:

- COMAR 26.11.02, “Permits, Approvals, and Registration.”
- The Maryland SIP-approved portions of COMAR 26.11.02.11, “Procedures for Obtaining Permits to Construct Certain Significant Sources.”

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<sup>30</sup> See 42 USC 7410(a)(2)(M).

- COMAR 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.”
- The EPA SIP-approved portions of the statutory provisions, § 7-207, “Generating stations or transmission lines -- General certification procedure,” and § 7-208, “Generating stations or transmission lines -- Joint construction of station and associated lines,” Public Utilities Article, Annotated Code of Maryland, establish requirements for construction and modification of generating stations. This includes consideration of related air quality impacts, and including requirements for the Commission to provide public notices.

The regulations below, under the chapter “Permits, Approvals, and Registration - Title V Permits,” COMAR 26.11.03. Note that these regulations are cited here for reference purposes only. They are not included in Maryland’s SIP-approved regulations.

- .01, “Applicability and General Requirements”
- .07, “Public Participation Procedures”
- .08, “Review by Affected States of Part 70 Permits,”
- .17, “Significant Permit Modifications”

Public notification of air quality alerts and warnings is provided in the following regulations:

- COMAR 26.11.04.02, “Ambient Air Quality Standards, Definitions, Reference Conditions, and Methods of Measurement,” adopts 40 CFR 58.50, “Index reporting,” which reports air quality to the public several times a day.
- COMAR 26.11.05.03, “Air Pollution Episode Criteria,” in the chapter “Air Pollution Episode System.”
- Maryland also provides public access to all air monitoring data via the Internet, as required under Section 2-103.2(b), Environment Article, Annotated Code of Maryland.

## **Conclusion**

Based on the information provided above, Maryland fully complies with the applicable requirements of §110(a)(2)(A) through §110(a)(2)(M). Therefore, no implementation plan to correct deficiencies is needed.

***Maryland State Implementation Plan for Clean Air Act Section 110(a)(2)  
for the PM2.5 National Ambient Air Quality Standards***

**Appendices**

*For Information Purposes Only*

**Appendix A:** Annotated Code of Maryland (See CD)

**Appendix B:** Letter from EPA Regional Administrator Shawn Garvin regarding the approval of MDE's July 1, 2015 annual ambient air monitoring network plan.

**Appendix C:** PM2.5 24 Hour Average 2012-2014 Data

## **Appendix A: Annotated Code of Maryland<sup>31</sup>**

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<sup>31</sup> From Matthew Bender and Company, Inc., a member of the LexisNexis Group, Copyright 2016, providing free public access to the Code of Maryland laws, <http://www.lexisnexis.com/hottopics/mdcode/>.

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**ENVIRONMENT**

**TITLE 2. AMBIENT AIR QUALITY CONTROL**

**SUBTITLE 1. DEFINITIONS; GENERAL PROVISIONS**

**Environment § 2-103. Powers and duties of Department**

(a) Authority to obtain funds. -- 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) Duties. -- 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) Use of monitoring facilities. -- 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.

## **ENVIRONMENT**

### **TITLE 2. AMBIENT AIR QUALITY CONTROL**

#### **SUBTITLE 1. DEFINITIONS; GENERAL PROVISIONS**

##### **Environment § 2-105. Air pollution emergency**

(a) Secretary to advise Governor; executive order. --

(1) In accordance with the rules and regulations adopted by the Department, the Secretary shall advise the Governor when an air pollution emergency exists or is reasonably certain to occur.

(2) When so advised, the Governor may issue an executive order that:

(i) Proclaims an air pollution emergency; and

(ii) Requires the immediate elimination of specifically identifiable sources of air pollution.

(b) Enforcement of executive order by Attorney General. -- If a person violates an executive order issued under this section, the Attorney General may sue in a court of appropriate jurisdiction to enforce compliance with the order.

## **PUBLIC UTILITIES**

### **DIVISION I. PUBLIC SERVICES AND UTILITIES**

#### **TITLE 2. PUBLIC SERVICE COMMISSION AND PEOPLE'S COUNSEL**

##### **SUBTITLE 1. PUBLIC SERVICE COMMISSION**

##### **Public Utilities § 2-112. Jurisdiction; general powers**

(a) Jurisdiction. -- To the full extent that the Constitution and laws of the United States allow, the Commission has jurisdiction over each public service company that engages in or operates a utility business in the State and over motor carrier companies as provided in Title 9 of this article.

(b) General powers. --

(1) The Commission has the powers specifically conferred by law.

(2) The Commission has the implied and incidental powers needed or proper to carry out its functions under this division.

(c) Liberal construction. -- The powers of the Commission shall be construed liberally.

## **Public Utilities § 2-113. Supervisory and regulatory power**

(a) In general. --

(1) The Commission shall:

(i) supervise and regulate the public service companies subject to the jurisdiction of the Commission to:

1. ensure their operation in the interest of the public; and

2. promote adequate, economical, and efficient delivery of utility services in the State without unjust discrimination; and

(ii) enforce compliance with the requirements of law by public service companies, including requirements with respect to financial condition, capitalization, franchises, plant, manner of operation, rates, and service.

(2) In supervising and regulating public service companies, the Commission shall consider the public safety, the economy of the State, the conservation of natural resources, and the preservation of environmental quality.

(b) Construction. -- The powers and duties listed in this title do not limit the scope of the general powers and duties of the Commission provided for by this division.

## **Public Utilities § 2-117. Enforcement power**

(a) Action for enforcement. --

(1) If the Commission believes that a public service company or gas master meter operator that is subject to the Commission's jurisdiction is violating or will violate this division, the Commission shall bring an action in the Commission's name for injunction or other appropriate action in the circuit court of a county where the public service company or gas master meter operator does business or has its principal place of business.

(2) The court:

(i) shall allow a period not exceeding 20 days for the defendant to show cause why the relief sought should not be granted;

(ii) after the period, shall inquire immediately into the merits of the case, without other or formal pleadings and without respect to any technical requirement;

(iii) may join as parties any persons as is necessary or proper to make a judgment or process

effective; and

(iv) shall issue a final order that grants appropriate relief.

(b) Action against vehicle registration. --

(1) The Commission shall notify an offender to appear and answer charges on complaint filed by a carrier or on discovery of a violation or infringement by the Commission's own investigation that:

(i) the offender is or has been infringing on or violating a permit granted to the carrier by the Commission;

(ii) the offender, without a permit, is exercising or using a right granted in a permit;

(iii) a right granted in a permit is being subjected to unrestricted or unregulated competition;  
or

(iv) the offender, without a permit, is serving, wholly or partly, directly or indirectly, a route set forth in a granted permit.

(2) The notice shall be sent to or served on the offender as provided by § 3-103 of this article.

(3) If the Commission finds that the offender is violating or infringing, or has violated or infringed on the rights of a carrier, the Commission shall order the offender to stop the operations that led to the violation or infringement.

(4) If the offender does not obey the order of the Commission, the Commission shall notify the offender to show cause within 10 days after the notice is mailed or served why the registration certificate for each vehicle involved in the operations should not be suspended or revoked.

(5) If cause is not shown or if, after hearing, the Commission finds that cause is not shown, the Commission shall certify to the Motor Vehicle Administration:

(i) that the registration certificate of each vehicle involved in the operations shall be suspended or revoked;

(ii) the condition of the suspension or revocation; and

(iii) if possible, the license number of each vehicle for which the certificate of registration is to be suspended or revoked.

(6) On receipt of the certification, the Motor Vehicle Administration automatically shall suspend or revoke each certificate of registration in accordance with the conditions contained in the certification.

(7) The action of the Motor Vehicle Administration may not be appealed but judicial review of an order or certification of the Commission may be sought as provided in Title 3, Subtitle 2 of this article.

### **Public Utilities § 2-121. Regulations**

The Commission may adopt reasonable regulations as necessary to carry out any law that relates to the Commission.

## **ENVIRONMENT**

### **TITLE 2. AMBIENT AIR QUALITY CONTROL**

#### **SUBTITLE 2. AIR QUALITY CONTROL ADVISORY COUNCIL**

##### **Environment § 2-201. Council established**

There is an Air Quality Control Advisory Council in the Department.

##### **Environment § 2-202. Membership**

(a) Composition; appointment of members. --

(1) The Council consists of not more than 15 members appointed by the Secretary.

(2) Of the Council members:

(i) 1 shall be appointed from a list of 3 qualified individuals who are professional engineers licensed in this State, submitted to the Secretary by the Baltimore section of the American Society of Mechanical Engineers;

(ii) 1 shall be appointed from a list of 3 qualified individuals submitted to the Secretary by the Maryland section of the American Institute of Chemical Engineers;

(iii) 2 shall be individuals who are employed in a manufacturing or public utility business in this State, each appointed from a separate list of 3 qualified individuals submitted to the Secretary by the Maryland Chamber of Commerce;

(iv) 1 shall be a physician;

(v) 1 shall be a member of the Regional Planning Council who is recommended to the Secretary by the Regional Planning Council;

(vi) 1 shall be appointed from a list of 3 qualified individuals submitted to the Secretary by the Maryland Association of Counties;

(vii) 4 shall be appointed, 1 from each list, from lists of 3 qualified individuals submitted to the Secretary by:

1. The Chairman of the Board of Directors of the Council of Governments of Metropolitan Washington;

2. The President of the Johns Hopkins University;

3. The President of the Maryland State-D.C. AFL-CIO; and

4. The Chancellor of the University System of Maryland;

(viii) 2 shall be public members who represent the community at large; and

(ix) 1 shall be a member of the Children's Environmental Health and Protection Advisory Council who has expertise in pediatric environmental health.

(3) In making appointments to the Council, the Secretary shall:

(i) Consider giving appropriate representation to the various geographical areas of this State; and

(ii) Appoint at least 1 member who is engaged actively in farming and knowledgeable in farm and rural pollutant problems.

(b) Tenure; vacancies. --

(1) The term of a member is 5 years.

(2) The terms of the members are staggered as required by the terms provided for members of the Council on July 1, 1986.

(3) The member who represents the Regional Planning Council serves only so long as the member remains on the Regional Planning Council.

(4) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(5) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

### **Environment § 2-203. Officers**

From among the Council members, the Secretary shall appoint a chairman and a vice chairman.

## **Environment § 2-204. Secretary of Council**

- (a) Appointment. -- The Secretary of the Environment shall appoint a secretary of the Council.
- (b) Council membership not required. -- The secretary of the Council need not be a member of the Council.

## **Environment § 2-205. Meetings; compensation**

- (a) Meetings. -- The Council shall meet at the times and places that the Secretary of the Environment or the chairman determines.
- (b) Compensation and reimbursement for expenses. -- Each member of the Council and the secretary of the Council:
  - (1) May not receive compensation; but
  - (2) Are entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

## **Environment § 2-206. Advisory role of Council**

- (a) Department to submit rule or regulation to Council. -- Before the Department adopts any rule or regulation under this title, the Department shall submit the proposed rule or regulation to the Council for advice.
- (b) Council to make recommendation without 30 days. -- Within 30 days after receiving a proposed rule or regulation from the Department, the Council shall give the Department its advice on the proposal by recommending:
  - (1) Adoption;
  - (2) Rejection; or
  - (3) Modification.

## **ENVIRONMENT**

### **TITLE 2. AMBIENT AIR QUALITY CONTROL**

#### **SUBTITLE 3. RULEMAKING**

### **Environment § 2-301. Air quality rules and regulations -- Adoption**

(a) In general. -- 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) Required considerations. -- 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) Grain drying operations. -- 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.

### **Environment § 2-302. Air quality rules and regulations -- Air quality control areas**

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

(b) Standards in air quality control areas. -- 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) Ambient air quality standards. --

(1) Unless a political subdivision requests a more restrictive standard under § 2-104 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.

(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) Emission standards. --

(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 § 2-104 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.

### **Environment § 2-303. Air quality rules and regulations -- Procedures for adoption**

(a) Compliance with Administrative Procedure Act. -- The Department may not adopt any rule or regulation under this title unless the requirements of this section and the Administrative Procedure Act are met.

(b) Public hearing. -- Before adopting any rule or regulation under this title, the Department shall announce and hold a public hearing on the subject.

(c) Notice. --

(1) Until October 1, 2014, at least 30 days before the public hearing, the Department shall publish notice of the hearing in a newspaper of general circulation in the area concerned.

(2) The notice required under paragraph (1) of this subsection shall state:

(i) The date, time, and place of the hearing;

(ii) The purpose of the hearing;

(iii) That, beginning on October 1, 2014, all future notices required under this title will be posted on the Department's Web site; and

(iv) A phone number or electronic mail address at the Department that a person can contact to arrange for the receipt of future public notices required under this title by first-class mail or electronic mail.

(3) Beginning on October 1, 2014, at least 30 days before the public hearing, the Department shall publish notice of the hearing in a newspaper of general circulation in the area concerned or on the Department's Web site.

(4) The notice required under paragraph (3) of this subsection shall state:

(i) The date, time, and place of the hearing; and

(ii) The purpose of the hearing.

(d) Publication of public notices; contact information. -- Beginning on October 1, 2014, the Department shall publish annually a notice in a newspaper of general circulation to inform the public of:

(1) The types of public notices required under this title that are available on the Department's Web site; and

(2) A phone number or electronic mail address at the Department that a person can contact to arrange for the receipt of future public notices required under this title by first-class mail or electronic mail.

(e) Action after hearing. -- After the public hearing, the Department may adopt the rule or regulation with or without modification.

## **ENVIRONMENT**

### **TITLE 2. AMBIENT AIR QUALITY CONTROL**

#### **SUBTITLE 4. PERMITS AND REGISTRATION**

##### **Environment § 2-403. Permits or registration -- Fees**

(a) In general. --

(1) The Department, by regulation, shall require and collect a fee for each permit issued under § 2-401 of this subtitle.

(2) In adopting the regulations under this section, the Department shall consult with industry to determine that the permit fee is reasonable and directly related to the actual cost of the permitting and regulatory activity, and does not exceed a certain dollar amount.

(b) Uses. --

(1) The amount of the fees shall cover:

(i) The reasonable cost of reviewing and acting on the application for the permits;

(ii) The reasonable costs incurred in implementing and enforcing the terms and conditions of the permits, exclusive of any court costs or other costs associated with any enforcement actions; and

(iii) The costs identified in § 502(b)(3) of the Clean Air Act Amendments of 1990.

(2) Fees assessed and collected under this section shall be used exclusively for the development and administration of the permit program under this subtitle.

(c) Amount. --

(1) The fee established under this section may not exceed:

(i) \$ 50 per ton of regulated emissions; and

(ii) \$ 500,000 for any single source in calendar years 2008 and 2009.

(2) For purposes of calculating fees under this section, carbon dioxide emissions shall be excluded.

(3) The fee established under this section may be adjusted to reflect changes in the Consumer Price Index, as authorized by 40 C.F.R. Part 70 (Operating Permit Program).

## **ENVIRONMENT**

### **TITLE 2. AMBIENT AIR QUALITY CONTROL**

#### **SUBTITLE 6. ENFORCEMENT; PENALTIES**

##### **Environment § 2-601. Use of agency facilities and services for enforcement**

To the maximum extent possible, the Department shall use the facilities and services of appropriate agencies of political subdivisions to enforce the standards set under this title.

##### **Environment § 2-602. Orders -- In general**

(a) Issuance. -- The Department may issue a show-cause order or a corrective order under this section if the Department has reasonable grounds to believe that the person to whom the order is directed has violated:

- (1) This title;
- (2) Any rule or regulation adopted under this title;
- (3) Any plan for compliance issued under this title; or
- (4) Any permit or registration issued under § 2-401 of this title.

(b) Order not prerequisite to other action. -- The Department is not required to issue a show-cause order or a corrective order before enforcing this title by injunction or civil penalty under this subtitle.

**Environment § 2-603. Orders -- Show-cause orders**

(a) Contents. -- A show-cause order issued under this subtitle shall:

- (1) Specify the provision that allegedly has been violated;
- (2) Describe the nature and extent of the alleged violation;
- (3) Require the person charged to appear at a hearing and show cause why an order requiring corrective action should not be issued; and
- (4) State the date, time, and place of the hearing.

(b) Service. -- Each show-cause order issued under this subtitle shall be in writing and shall be served:

- (1) Not less than 20 days before the time set for the hearing; and
- (2) As a summons is served under the Maryland Rules or by certified mail.

**Environment § 2-604. Orders -- Corrective orders**

(a) Contents. -- A corrective order issued under this subtitle shall:

- (1) Specify the provision that allegedly has been violated;
- (2) Describe the nature and extent of the alleged violation;
- (3) Require corrective action within a time specified in the order; and
- (4) State that the person charged will receive a hearing if the person requests the hearing within 10 days after service.

(b) Service. -- Each corrective order issued under this subtitle shall be in writing and shall be served:

(1) As a summons is served under the Maryland Rules; or

(2) By certified mail.

(c) Final order; request for hearing. -- Unless the person charged with a corrective order requests a hearing within 10 days after service, the corrective order becomes a final order.

(d) Hearing. -- If the person charged with a corrective order makes a timely request for a hearing under subsection (c) of this section, the Secretary shall:

(1) Hold a hearing within 20 days after the request is made; and

(2) Give the person written notice of the date, time, and place of the hearing, at least 10 days before the hearing date.

#### **Environment § 2-605. Orders -- Hearings**

(a) Application of Administrative Procedure Act. -- The Department shall give notice of and hold any hearing held under § 2-603 or § 2-604 of this subtitle in accordance with the Administrative Procedure Act and the requirements of this section.

(b) Examination of information. -- Before the hearing, the person charged, on request, shall be given an opportunity to examine all information and reports that relate to the alleged offense.

(c) Right to counsel. -- The person charged may be represented at the hearing by counsel.

(d) Confidential information. -- A person may withhold information about secret processes or methods of manufacture or production from any public hearing under this subtitle, and the Department and its personnel shall keep confidential any such information that it requires, ascertains, or discovers.

(e) Testimony. -- Testimony taken at the hearing shall be under oath and recorded.

(f) Copies of transcript or record. -- Copies of the transcript and of any other record of the hearing shall be provided to the person charged at that person's request and expense.

(g) Subpoenas; oaths. --

(1) The Secretary or a designee of the Secretary may issue subpoenas for any person or evidence and administer oaths in connection with any proceeding under this section.

(2) At the request and the expense of the person charged, the Secretary or a designee of the Secretary shall subpoena any person or evidence on behalf of the person charged.

(3) If a person fails to comply with a notice of hearing or a subpoena issued under this section, the circuit court for the county where the person charged resides, on petition of the Secretary, may:

- (i) Compel obedience to the notice or subpoena; or
- (ii) Compel testimony or the production of evidence.

### **Environment § 2-606. Orders -- Action after hearing**

On the basis of the evidence produced at a hearing, the Secretary or the designated hearing officer may issue a corrective or other final order:

(1) Granting an exception from a rule or regulation adopted under this title on such conditions as the Secretary may determine; or

(2) Directing the person charged to comply, within a specified time, with any rule or regulation that the person is found to be violating.

### **Environment § 2-607. Orders -- Judicial review**

(a) Right to appeal. --

(1) Any person aggrieved by a final decision of the Secretary or the designated hearing officer in connection with a show-cause order, a corrective order, or any other final order issued under this subtitle may take a direct judicial appeal.

(2) The appeal shall be made as provided for judicial review of final decisions in the Administrative Procedure Act.

(b) Stay of order. -- An appeal under this section does not stay automatically the order from which the appeal is taken.

### **Environment § 2-608. Department to secure compliance**

(a) Action required within 1 year. -- Within 1 year after the Department issues a show-cause order or a corrective order, the Department shall take final action and attempt to secure compliance with any final order. If the Department has not secured compliance within this period, the Department shall take immediate steps to seek enforcement under § 2-609 of this subtitle.

(b) Action permitted within 1 year. -- Nothing in this section prohibits the Department from bringing an action under § 2-609 of this subtitle within 1 year after the Department issues a show-cause order or a corrective order under this subtitle.

### **Environment § 2-609. Enforcement actions**

(a) In general. -- The Department may bring:

(1) An action to enjoin any conduct that violates any provision of this title or any rule, regulation, or order adopted or issued under this title; or

(2) A civil action to collect a civil penalty under § 2-610 of this subtitle.

(b) Action not exclusive. -- The right to bring an action under subsection (a) of this section is in addition to and not instead of the right to bring any other action under that subsection.

(c) Judicial extension. -- For good cause shown, the court that hears a proceeding to enforce an order issued under this subtitle may grant, without further penalty to the violator, a reasonable extension of time to abate the violation.

### **Environment § 2-609.1. Criminal penalty**

(a) "Approval" defined. -- In this section, "approval" means approval for prevention of significant deterioration or approval of new sources in nonattainment areas.

(b) Knowing violations under this title; penalties. --

(1) (i) A person may not knowingly act or fail to act in violation of a condition or requirement imposed on the person by a permit or approval issued under this title.

(ii) A person may not knowingly fail to obtain a permit or approval that the person knows or should have known is required under this title.

(iii) A person may not violate a duty imposed on the person by a rule, regulation, order, or approved plan for compliance adopted or issued under this title with knowledge that the person's conduct constitutes a violation of the duty.

(2) A person who violates a provision of this subsection is guilty of a misdemeanor and on conviction is subject to:

(i) For a first offense, a fine not exceeding \$ 25,000 or imprisonment not exceeding 1 year or both; or

(ii) For a violation committed after a first conviction under this section, a fine not exceeding \$ 50,000 or imprisonment not exceeding 2 years or both.

(3) Each day on which violations occur is a separate violation under this subsection.

(4) This subsection does not apply to violations enumerated in subsection (c) of this section.

(c) Additional knowing violations; penalties. -- A person is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$ 10,000 for each day of violation or imprisonment not exceeding 6 months or both if the person:

(1) Knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this title or any rule, regulation, order, approved plan for compliance, approval, or permit adopted or issued under this title; or

(2) Knowingly falsifies, tampers with, or renders inaccurate any monitoring device or methods required to be maintained under this title or any rule, regulation, order, approved plan for compliance, approval, or permit adopted or issued under this title.

### **Environment § 2-610. Civil penalty**

(a) In general. -- A person who violates any provision of this title or any rule, regulation, or order adopted or issued under this title is liable for a civil penalty not exceeding \$ 25,000, to be collected in a civil action in the circuit court for any county. Each day a violation continues is a separate violation under this section.

(b) Compromise. -- If the Attorney General concurs, the Secretary may compromise and settle any claim for a civil penalty under this section.

(c) Remission of penalty. -- If, within 36 months after a civil penalty is compromised and settled under subsection (b) of this section, the person against whom the penalty is imposed satisfies the Secretary that the violation has been eliminated or the order has been satisfied, the Secretary, with the concurrence of the Attorney General, may return to the person not more than 75 percent of the amount of the penalty paid.

### **Environment § 2-610.1. Additional civil penalties**

(a) Authority of Department to impose. -- In addition to any other remedies available at law or in equity and after an opportunity for a hearing which may be waived in writing by the person accused of a violation, the Department may impose a penalty for violation of any provision of this title, Subtitle 4 of Title 6 of this article, or any rule, regulation, order, plan for compliance, registration, or permit adopted or issued under those provisions.

(b) Notice to alleged violators. -- Before taking any action under this section, the Department shall provide the alleged violator with written notice of the proposed action and an opportunity for an informal meeting.

(c) Amount of penalty. --

(1) The penalty imposed on a person under this section shall be:

(i) Up to \$ 2,500 for each violation;

(ii) Not more than \$ 50,000 total for any single administrative hearing; and

(iii) Assessed with consideration given to:

1. The willfulness of the violation, the extent to which the existence of the violation was known to the violator but uncorrected by the violator, and the extent to which the violator exercised reasonable care;

2. Any actual harm to human health or to the environment, including injury to or impairment of the air quality or the natural resources of this State;

3. The cost of control;

4. The nature and degree of injury to or interference with general welfare, health, and property;

5. The extent to which the location of the violation, including location near areas of human population, creates the potential for harm to the environment or to human health or safety;

6. The available technology and economic reasonableness of controlling, reducing, or eliminating the emissions that caused the violation; and

7. The extent to which the current violation is part of a recurrent pattern of the same or similar type of violation committed by the violator.

(2) Each day a violation occurs is a separate violation under this section.

(3) Any penalty imposed under this section is payable to this State and collectible in any manner provided at law for the collection of debts.

(4) If any person who is liable to pay a penalty imposed under this section fails to pay it after demand, the amount, together with interest and any costs that may accrue, shall be:

(i) A lien in favor of this State on any property, real or personal, of the person; and

(ii) Recorded in the office of the clerk of court for the county in which the property is located.

### **Environment § 2-610.2. Criminal prosecution**

Repealed by Acts 2008, chs. 193 and 194, § 1, effective October 1, 2008.

### **Environment § 2-611. Plan for compliance**

(a) Submission and effect. -- A person is not subject to action for a violation of this title or any rule or regulation adopted under this title so long as the person acts in accordance with a plan for compliance that:

(1) The person has submitted to the Secretary; and

(2) The Secretary has approved, with or without amendments, on the recommendation of the Air Management Administration.

(b) Duty of Secretary to act. -- The Secretary shall act on any plan for compliance within 90 days after the plan for compliance is submitted to the Secretary.

### **Environment § 2-612. Noncompliance penalty**

(a) Rules and regulations. -- The Secretary may adopt rules and regulations that:

(1) Are patterned after § 120 of the federal Clean Air Act and the federal regulations adopted under § 120 of the federal Clean Air Act; and

(2) Specify:

(i) The circumstances under which a person who violates this title is subject to a noncompliance penalty equal to the economic benefit that accrues to the person because of noncompliance;

(ii) The method of calculating the noncompliance penalty;

(iii) The manner of payment of the noncompliance penalty; and

(iv) The circumstances under which a noncompliance penalty collected under this section is subject to rebate.

(b) Quarterly nonpayment penalty. --

(1) If a person fails to pay a noncompliance penalty in a timely manner, the Secretary may require the person to pay an additional nonpayment penalty for each quarter that the noncompliance penalty remains unpaid.

(2) The nonpayment penalty shall equal 20 percent of the total of the person's noncompliance penalties and nonpayment penalties that remain unpaid at the beginning of the quarter.

(c) Judicial enforcement. -- If a person fails to pay a noncompliance penalty or nonpayment penalty imposed under this section, the Department may bring an action to collect the penalty in the same manner as a civil penalty is collected under § 2-610 of this subtitle.

(d) Action not exclusive. -- An action under this section to collect a noncompliance penalty is in addition to and not instead of:

(1) An action under § 2-609 of this subtitle; or

(2) Any other relief under this subtitle.

### **Environment § 2-613. Conditions not violations**

A condition that is caused by an act of God, a strike, a riot, a catastrophe, or a cause over which an alleged violator has no control is not a violation of this title or any standard set or rule or regulation adopted under this title.

### **Environment § 2-614. Attorney General responsible for cases arising under provisions of subtitle**

The Attorney General shall take charge of, prosecute, and defend on behalf of this State every case arising under the provisions of this subtitle, including the recovery of penalties.

## **ENVIRONMENT**

### **TITLE 2. AMBIENT AIR QUALITY CONTROL**

#### **SUBTITLE 10. HEALTHY AIR ACT.**

### **Environment § 2-1005. Penalties.**

(a) In general. --

(1) The allowance penalty provisions of this section are in addition to the administrative and civil penalty provisions provided under §§ 2-604, 2-609, 2-610, and 2-610.1 of this title.

(2) Each one-half ounce of mercury and each ton of sulfur dioxide or nitrogen oxides emitted in excess of the limitations set forth or imposed in accordance with § 2-1002 of this subtitle shall

be a separate violation under §§ 2-610 and 2-610.1 of this title.

(b) Failure to meet 2010 to 2012 emission standards. -- If, in any calendar year during the period from January 1, 2010 through December 31, 2012, a person fails to achieve and maintain full compliance with the emissions limitations established by the Department under § 2-1002(e) of this subtitle, the person shall surrender:

(1) One sulfur dioxide allowance for each ton of sulfur dioxide emitted in excess of the emission rate limitation; and

(2) One oxide of nitrogen allowance for every 2 tons of sulfur dioxide emitted in excess of the emission rate limitation.

(c) Failure to meet 2009 to 2011 emission standards. -- If, in any calendar year, during the period from January 1, 2009 through December 31, 2011, a person fails to achieve full compliance with the oxides of nitrogen emission limitations in § 2-1002(e) of this subtitle, the person shall surrender one oxide of nitrogen allowance for each ton of oxides of nitrogen emitted in excess of the required emission rate limitation.

(d) Surrender of allowances. -- A person that surrenders allowances in accordance with subsection (b) or (c) of this section shall surrender the allowances to the Department's surrender account by March 1 of the year following the year in which the person failed to achieve and maintain compliance with the applicable emission limitation.

## **NATURAL RESOURCES**

### **TITLE 3. ENVIRONMENTAL PROGRAMS**

#### **SUBTITLE 3. POWER PLANT RESEARCH PROGRAM**

##### **Natural Resources § 3-303. Power plant environmental research program**

(a) Implementation; effective coordination of assignments; reimbursement of electric companies. -- The Secretary, in consultation with the Director of the Maryland Energy Administration and in cooperation with the Secretaries of the Environment, Agriculture, and Commerce and the Director of Planning and electric company representatives shall implement a continuing research program for electric power plant site evaluation and related environmental and land use considerations. The Secretary shall seek from additional sources recommendations for related research to be included in the program. The additional sources shall include appropriate federal and State agencies, electric companies and technical, scientific or educational institutions or organizations. The Secretary in consultation with the Director of the Maryland Energy Administration shall institute effective procedures for coordinating environmental research assignments to prevent dissipation of money, time, and effort. To this end, the State's electric companies shall be reimbursed from the Fund for environmental research specifically required to satisfy application and permit requirements for any federal, State, or local regulatory agencies, if the electric company has requested reimbursement in advance and furnishes an outline of the program and its estimated cost so that the Secretary can budget it in advance.

(b) Components. -- The program shall include:

(1) General biological and ecological baseline studies, including, but not limited to, appropriate environmental studies of the biology, physics, and chemistry of the Chesapeake Bay and tributaries; sediment and biological surveys to determine and identify essential marine organism nursery areas of the State's waters, including the Chesapeake Bay and tributaries; epibenthos; bottom species; crab; finfish and human use studies;

(2) Research to assist prediction, including but not limited to experimental research, field and laboratory, and the development and provision for physical, mathematical, and biological modeling tools to assist in determining and evaluating the effects of variation of natural waters resulting from electric generating plant operations including changes in temperature, oxygen levels, salinity, biocides, radionuclides, and "heavy" metals. This research also includes collection and organization of relevant information and data necessary to operate physical, mathematical, and biological modeling tools;

(3) Provisions for monitoring operations of electric power facilities located in the State. These provisions include but are not limited to a determination of actual distribution and effect of temperature, salinity, oxygen, radionuclides, "heavy" metals, and biological effects; radiological; "heavy" metals and biocide effects; recreational and commercial fishing gains and losses; and human health and welfare effects;

(4) Research and investigations relating to effects on air resources of electric power plants and effects of air pollutants from power plants on public health and welfare, vegetation, animals, materials, and esthetic values, including baseline studies, predictive modeling, and monitoring of the air mass at sites of proposed or operating electric generating stations, evaluation of new or improved methods for minimizing air pollution from power plants and other matters pertaining to the effect of power plants on the air environment;

(5) An environmental evaluation of electric power plant sites proposed for future development and expansion and their relationship to the waters and air of the State;

(6) Evaluation of the environmental effects of new electric power generation technologies and extraordinary systems related to power plants designed to minimize environmental effects;

(7) Determining the potential for constructive uses of waste energy to be released at proposed electric plant sites; and

(8) Analysis of the socioeconomic impact of electric power generation facilities on the land uses of the State.

**PUBLIC UTILITIES**  
**DIVISION I. PUBLIC SERVICES AND UTILITIES**

**TITLE 7. GAS, ELECTRIC, AND WATER COMPANIES**  
**SUBTITLE 2. ELECTRIC GENERATION FACILITY PLANNING**

**Public Utilities § 7-205. Electric companies -- Modification of power plant**

(a) "Modification" defined. --

(1) In this section, "modification" means a physical alteration of, replacement of, or other change to the facilities at a power plant, or a change in the fuel used by the plant, that could result in a change of the air emissions from the plant or from a generating unit of the plant.

(2) "Modification" does not include:

(i) routine maintenance or repairs of the facilities of a power plant; or

(ii) a change that the Commission determines will not result in an increase in air emissions from the plant or from a generating unit of the plant.

(b) Prior approval of Commission required. -- Subject to subsections (c) through (e) of this section, a person may not commence a modification without the prior approval of the Commission under this title.

(c) Filing of application. --

(1) Unless the Commission orders otherwise, an application for a modification to a power plant shall be filed with the Commission at least 180 days before the date on which the modification is to commence.

(2) The applicant for the modification shall submit to the Commission and to the Department of the Environment all information relating to the modification, including:

(i) detailed plans and specifications; and

(ii) the impact of the modification on air quality.

(d) Decision. -- The Commission shall render its decision within 150 days after the day the application is filed.

(e) Applicability of temporary fuel variances. -- Notwithstanding the provisions of this section, a modification to a power plant that involves the short-term inability to obtain the type of fuel normally used by the plant is subject to Title 2, Subtitle 5 of the Environment Article.

**Public Utilities § 7-207. Generating stations or transmission lines -- General certification procedure**

(a) Definitions. --

(1) (i) In this section and § 7-208 of this subtitle, "construction" means:

1. any physical change at a site, including fabrication, erection, installation, or demolition; or

2. the entry into a binding agreement or contractual obligation to purchase equipment exclusively for use in construction in the State or to undertake a program of actual construction in the State which cannot be canceled or modified without substantial loss to the owner or operator of the proposed generating station.

(ii) "Construction" does not include a change that is needed for the temporary use of a site or route for nonutility purposes or for use in securing geological data, including any boring that is necessary to ascertain foundation conditions.

(2) In this section, "qualified generator lead line" means an overhead transmission line that is designed to carry a voltage in excess of 69,000 volts and would allow an out-of-state Tier 1 or Tier 2 renewable source to interconnect with a portion of the electric system in Maryland that is owned by an electric company.

(b) Certificate of public convenience and necessity required. --

(1) (i) Unless a certificate of public convenience and necessity for the construction is first obtained from the Commission, a person may not begin construction in the State of:

1. a generating station; or

2. a qualified generator lead line.

(ii) If a person obtains Commission approval for construction under § 7-207.1 of this subtitle, the Commission shall exempt a person from the requirement to obtain a certificate of public convenience and necessity under this section.

(iii) Notwithstanding subparagraph (i) of this paragraph, a person may not apply to obtain a certificate of public convenience and necessity for construction of a qualified generator lead line unless:

1. at least 90 days before the filing of an application for a certificate of public convenience and necessity, the person had in good faith offered the electric company that owns that portion of the electric grid in Maryland to which the qualified generator lead line would interconnect a full and fair opportunity for the electric company to construct the qualified generator lead line; and

2. at any time at least 10 days before the filing of an application for a certificate of public convenience and necessity, the electric company:

A. did not accept from the person a proposal or a negotiated version of the proposal under which the electric company would construct the qualified generator lead line; or

B. stated in writing that the electric company did not intend to construct the qualified generator lead line.

(2) Unless a certificate of public convenience and necessity for the construction is first obtained from the Commission, and the Commission has found that the capacity is necessary to ensure a sufficient supply of electricity to customers in the State, a person may not exercise a right of condemnation in connection with the construction of a generating station.

(3) (i) Except as provided in paragraph (4) of this subsection, unless a certificate of public convenience and necessity for the construction is first obtained from the Commission, a person may not begin construction of an overhead transmission line that is designed to carry a voltage in excess of 69,000 volts or exercise a right of condemnation with the construction.

(ii) For construction related to an existing overhead transmission line, the Commission may waive the requirement in subparagraph (i) of this paragraph for good cause.

(iii) Notwithstanding subparagraph (i) of this paragraph and subject to subparagraph (iv) of this paragraph, the Commission may issue a certificate of public convenience and necessity for the construction of an overhead transmission line only if the applicant for the certificate of public convenience and necessity:

1. is an electric company; or

2. is or, on the start of commercial operation of the overhead transmission line, will be subject to regulation as a public utility by an officer or an agency of the United States.

(iv) The Commission may not issue a certificate of public convenience and necessity for the construction of an overhead transmission line in the electric distribution service territory of an electric company to an applicant other than an electric company if:

1. the overhead transmission line is to be located solely within the electric distribution service territory of that electric company; and

2. the cost of the overhead transmission line is to be paid solely by that electric company and its ratepayers.

(4) (i) Except as provided in subparagraph (ii) of this paragraph, for construction related to an existing overhead transmission line designed to carry a voltage in excess of 69,000 volts, the Commission shall waive the requirement to obtain a certificate of public convenience and necessity if the Commission finds that the construction does not:

1. require the person to obtain new real property or additional rights-of-way through eminent domain; or

2. require larger or higher structures to accommodate:

A. increased voltage; or

B. larger conductors.

(ii) 1. For construction related to an existing overhead transmission line, including repairs, that is necessary to avoid an imminent safety hazard or reliability risk, a person may undertake the necessary construction.

2. Within 30 days after construction is completed under subparagraph 1 of this subparagraph, a person shall file a report with the Commission describing the work that was completed.

(c) Notice to interested persons. --

(1) On receipt of an application for a certificate of public convenience and necessity under this section, the Commission shall provide notice immediately or require the applicant to provide notice immediately of the application to:

(i) the Department of Planning;

(ii) the governing body of each county or municipal corporation in which any portion of the generating station, overhead transmission line, or qualified generator lead line is proposed to be constructed;

(iii) the governing body of each county or municipal corporation within 1 mile of the proposed location of the generating station, overhead transmission line, or qualified generator lead line;

(iv) each member of the General Assembly representing any part of a county in which any portion of the generating station, overhead transmission line, or qualified generator lead line is proposed to be constructed;

(v) each member of the General Assembly representing any part of each county within 1 mile of the proposed location of the generating station, overhead transmission line, or qualified generator lead line; and

(vi) all other interested persons.

(2) The Department of Planning shall forward the application to each appropriate State unit and unit of local government for review, evaluation, and comment regarding the significance of the proposal to State, area-wide, and local plans or programs.

(d) Public hearing. --

(1) The Commission shall provide an opportunity for public comment and hold a public hearing on the application for a certificate of public convenience and necessity in each county and municipal corporation in which any portion of the construction of a generating station, an overhead transmission line designed to carry a voltage in excess of 69,000 volts, or a qualified generator lead line is proposed to be located.

(2) The Commission shall hold the public hearing jointly with the governing body of the county or municipal corporation in which any portion of the construction of the generating station, overhead transmission line, or qualified generator lead line is proposed to be located, unless the governing body declines to participate in the hearing.

(3) Once in each of the 4 successive weeks immediately before the hearing date, the Commission shall provide weekly notice of the public hearing and an opportunity for public comment by advertisement in a newspaper of general circulation in the county or municipal corporation affected by the application.

(4) (i) The Commission shall ensure presentation and recommendations from each interested State unit, and shall allow representatives of each State unit to sit during hearing of all parties.

(ii) The Commission shall allow each State unit 15 days after the conclusion of the hearing to modify the State unit's initial recommendations.

(e) Final action by Commission. -- The Commission shall take final action on an application for a certificate of public convenience and necessity only after due consideration of:

(1) the recommendation of the governing body of each county or municipal corporation in which any portion of the construction of the generating station, overhead transmission line, or qualified generator lead line is proposed to be located; and

(2) the effect of the generating station, overhead transmission line, or qualified generator lead line on:

(i) the stability and reliability of the electric system;

(ii) economics;

(iii) esthetics;

(iv) historic sites;

(v) aviation safety as determined by the Maryland Aviation Administration and the administrator of the Federal Aviation Administration;

(vi) when applicable, air and water pollution; and

(vii) the availability of means for the required timely disposal of wastes produced by any generating station.

(f) Construction of overhead transmission lines. -- For the construction of an overhead transmission line, in addition to the considerations listed in subsection (e) of this section, the Commission shall:

(1) take final action on an application for a certificate of public convenience and necessity only after due consideration of the need to meet existing and future demand for electric service; and

(2) require as an ongoing condition of the certificate of public convenience and necessity that an applicant complies with:

(i) all relevant agreements with PJM Interconnection, L.L.C., or its successors, related to the ongoing operation and maintenance of the overhead transmission line; and

(ii) all obligations imposed by the North America Electric Reliability Council and the Federal Energy Regulatory Commission related to the ongoing operation and maintenance of the overhead transmission line.

(g) Transmission lines near airport runway. --

(1) The Commission may not authorize, and a person may not undertake, the construction of an overhead transmission line that is aligned with and within 1 mile of either end of a public airport runway, unless:

(i) the Federal Aviation Administration determines that the construction of an overhead transmission line will not constitute a hazard to air navigation; and

(ii) the Maryland Aviation Administration concurs in that determination.

(2) A privately owned airport runway shall qualify as a public airport runway under this subsection only if the runway has been on file with the Federal Aviation Administration for at least 2 years as being open to the public without restriction.

**Public Utilities § 7-208. Generating stations or transmission lines -- Joint construction of station and associated lines.**

(a) Definitions. --

(1) In this section the following words have the meanings indicated.

(2) "Qualified offshore wind project" has the meaning stated in § 7-701 of this title.

(3) "Qualified submerged renewable energy line" means:

(i) a line carrying electricity supply and connecting a qualified offshore wind project to the transmission system; and

(ii) a line in which the portions of the line crossing any submerged lands or any part of a beach erosion control district are buried or submerged.

(b) Scope of section. -- This section applies to any person:

(1) constructing a generating station and its associated overhead transmission lines designed to carry a voltage in excess of 69,000 volts;

(2) exercising the right of condemnation in connection with the construction; or

(3) constructing a qualified submerged renewable energy line.

(c) Filing with Commission. --

(1) To obtain the certificate of public convenience and necessity required under § 7-207 of this subtitle for construction under this section, a person shall file an application with the Commission at least 2 years before construction of the facility will commence.

(2) The Commission may waive the 2-year requirement on a showing of good cause.

(d) Contents. -- The applicant shall:

(1) include in an application under this section the information that the Commission requests initially; and

(2) furnish any additional information that the Commission requests subsequently.

(e) Notice and public hearing. --

(1) On the receipt of an application under this section, together with any additional information requested under subsection (d)(2) of this section, the Commission shall provide notice to:

- (i) all interested persons;
- (ii) the Department of Agriculture;
- (iii) the Department of Economic Competitiveness and Commerce;
- (iv) the Department of the Environment;
- (v) the Department of Natural Resources;
- (vi) the Department of Transportation;
- (vii) the Department of Planning; and
- (viii) the Maryland Energy Administration.

(2) On receipt of an application under this section, and whenever additional information is received under subsection (d)(2) of this section, the Commission shall provide notice immediately or require the applicant to provide notice immediately to:

(i) the governing body of each county or municipal corporation in which any portion of the generating station or the associated overhead transmission lines is proposed to be constructed;

(ii) the governing body of each county or municipal corporation within 1 mile of the proposed location of the generating station or the associated overhead transmission lines;

(iii) each member of the General Assembly representing any part of a county in which any portion of the generating station or the associated overhead transmission lines is proposed to be constructed; and

(iv) each member of the General Assembly representing any part of each county within 1 mile of the proposed location of the generating station or the associated overhead transmission lines.

(3) The Commission shall hold a public hearing on the application as required by § 7-207 of this subtitle after:

(i) the receipt of any additional information requested under subsection (d)(2) of this section that the Commission considers necessary; and

(ii) any publication of notice the Commission considers to be proper.

(4) (i) At the public hearing, the Commission shall ensure presentation of the information and recommendations of the State units specified in paragraph (1) of this subsection and shall allow the official representative of each unit to sit during hearing of all parties.

(ii) Based on the evidence relating to the unit's areas of concern, the Commission shall allow each unit 15 days after the conclusion of the hearing to modify or affirm the unit's initial recommendations.

(f) Commission decision. -- Within 90 days after the conclusion of the hearing on an application under this section, the Commission shall:

(1) (i) grant a certificate of public convenience and necessity unconditionally;

(ii) grant the certificate, subject to conditions the Commission determines to be appropriate;  
or

(iii) deny the certificate; and

(2) notify all interested parties of its decision.

(g) Inclusion of federal and State environmental laws and standards in certificate. --

(1) The Commission shall include in each certificate it issues under subsection (f) of this section:

(i) the requirements of the federal and State environmental laws and standards that are identified by the Department of the Environment; and

(ii) the methods and conditions that the Commission determines are appropriate to comply with those environmental laws and standards.

(2) The Commission may not adopt any method or condition under paragraph (1)(ii) of this subsection that the Department of the Environment determines is inconsistent with federal and State environmental laws and standards.

(h) Majority required. --

(1) A decision of the Commission regarding the issuance of a certificate requires the vote of a majority of the members of the Commission.

(2) If a majority of the members of the Commission fails to reach agreement on the conditions to be attached to a conditional certificate, the certificate shall be denied.

(i) Additional authority to construct. -- The grant of a certificate by the Commission to any person under subsection (f) of this section constitutes:

(1) authority for the person to dredge and construct bulkheads in the waters or private wetlands of the State and to appropriate or use the waters; and

(2) registration and a permit to construct, as required under Title 2, Subtitle 4 of the Environment Article.

## **STATE GOVERNMENT**

### **TITLE 10. GOVERNMENTAL PROCEDURES**

#### **SUBTITLE 1. ADMINISTRATIVE PROCEDURE ACT -- REGULATIONS**

##### **PART III. PROPOSAL AND ADOPTION**

###### **State Government § 10-111. Time limitations; public hearings**

(a) In general. --

(1) Except as provided in subsection (b) of this section, a unit may not adopt a proposed regulation until:

(i) after submission of the proposed regulation to the Committee for preliminary review under § 10-110 of this subtitle; and

(ii) at least 45 days after its first publication in the Register.

(2) (i) If the Committee determines that an appropriate review cannot reasonably be conducted within 45 days and that an additional period of review is required, it may delay the adoption of the regulation by so notifying the promulgating unit and the Division of State Documents, in writing, prior to the expiration of the 45-day period.

(ii) If notice is provided to the promulgating unit pursuant to subparagraph (i) of this paragraph, the promulgating unit may not adopt the regulation until it notifies the Committee, in writing, of its intention to adopt the regulation and provides the Committee with a further period of review of the regulation that terminates not earlier than the later of the following:

1. the 30th day following the notice provided by the promulgating unit under this subparagraph; or

2. the 105th day following the initial publication of the regulation in the Register.

(3) The promulgating unit shall permit public comment for at least 30 days of the 45-day period under paragraph (1)(ii) of this subsection.

(b) Emergency adoptions. --

(1) The unit may adopt a proposed regulation immediately if the unit:

(i) declares that the emergency adoption is necessary;

(ii) submits the proposed regulation to the Committee and the Department of Legislative

Services, together with the fiscal impact statement required under subsection (c) of this section; and

(iii) has the approval of the Committee for the emergency adoption.

(2) (i) Subject to subparagraphs (ii), (iii), and (iv) of this paragraph, the approval of the Committee may be given:

1. by a majority of its members who are present and voting at a public hearing or meeting of the Committee; or

2. if staff of the Committee tries but is unable to contact a majority of the members of the Committee in a timely manner and immediate adoption is necessary to protect the public health or safety, by its presiding Chairman or, if its presiding Chairman is unavailable, by its cochair.

(ii) If a member of the Committee requests a public hearing on the emergency adoption of a regulation, the Committee shall hold a public hearing.

(iii) 1. If a public hearing is held on the emergency adoption of a regulation, the Committee may not approve the emergency adoption except by a majority vote of the members present and voting at the hearing or at a meeting of the Committee subsequent to the hearing.

2. If a vote on the emergency regulation is not taken at the public hearing or immediately thereafter, the Committee members shall be provided at least 1 week's notice of the scheduling of any subsequent meeting to vote on the regulation.

(iv) Unless the Governor declares that immediate adoption is necessary to protect the public health or safety, the Committee may not approve the emergency adoption of a regulation earlier than 10 business days after receipt of the regulation by the Committee and the Department of Legislative Services.

(3) If there is no request for a public hearing, the staff of the Committee may poll, in person, by telephone, or in writing:

(i) the members of the Committee; or

(ii) if staff of the Committee tries but is unable to contact a majority of the members of the Committee in a timely manner and immediate adoption is necessary to protect the public health or safety, the presiding Chairman or the cochair.

(4) (i) The Committee may impose, as part of its approval, any condition.

(ii) The Committee shall impose, as part of its approval, a time limit not to exceed 180 days on each request for emergency status.

(iii) If the unit does not adopt the regulation finally before the time limit expires, the status of

the regulation reverts to its status before the emergency adoption.

(5) The Committee may rescind its approval by a majority of its members present and voting at a public hearing or meeting of the Committee.

(c) Fiscal impact statement. --

(1) The fiscal impact statement, prepared by the unit and submitted under subsection (b) of this section, shall state:

(i) an estimate of the impact of the emergency regulation on the revenues and expenditures of the State;

(ii) whether the State budget for the fiscal year in which the regulation will become effective contains an appropriation of the funds necessary for the implementation of the emergency regulation;

(iii) if an appropriation is not contained in the State budget, the source of the funds necessary for the implementation of the emergency regulation; and

(iv) whether the emergency regulation imposes a mandate on a local government unit.

(2) If the emergency regulation imposes a mandate on a local government unit, the fiscal impact statement shall:

(i) indicate whether the regulation is required to comply with a federal statutory or regulatory mandate;

(ii) if the information may be practicably obtained given the emergency circumstances of the regulations, include an estimate of the impact of the emergency regulation on the revenues and expenditures of local government units; and

(iii) if applicable, and if the required data is available, include the estimated effect on local property tax rates.

### **State Government § 10-111.1. Opposition to adoption**

(a) In general. --

(1) Prior to the expiration of any period of review granted to or reserved by the Committee pursuant to § 10-111(a) of this subtitle, the Committee, by a majority vote, may oppose the adoption of any proposed regulation.

(2) Unless waived by both of the presiding officers, at least 2 weeks prior to acting pursuant to subsection (a)(1) of this section with respect to any proposed regulation, the Committee shall

notify the presiding officers who shall notify the appropriate standing committees that the special procedure established by this section may be exercised.

(b) Factors considered. -- In its review of a proposed regulation pursuant to this section, the factors the Committee shall consider shall include whether the regulation:

(1) is in conformity with the statutory authority of the promulgating unit; and

(2) reasonably complies with the legislative intent of the statute under which the regulation was promulgated.

(c) Notice to Governor and promulgating unit. --

(1) Within 5 working days after the Committee votes to oppose the adoption of a proposed regulation, it shall provide written notice to the Governor and the promulgating unit of its action.

(2) Upon receipt of such notice, and with written notice to the Committee and as otherwise required by law, the promulgating unit may:

(i) withdraw the regulation;

(ii) modify the regulation, but only in accordance with § 10-113 of this subtitle; or

(iii) submit the regulation to the Governor with a statement of the justification for the unit's refusal to withdraw or modify the regulation.

(3) Following the receipt of notice under paragraph (2)(iii) above, the Governor may consult with the Committee and the unit in an effort to resolve the conflict. After written notice has been provided to the presiding officers and to the Committee, the Governor may:

(i) instruct the unit to withdraw the regulation;

(ii) instruct the unit to modify the regulation, but only in accordance with § 10-113 of this subtitle; or

(iii) approve the adoption of the regulation.

(d) Approval of Governor. -- A proposed regulation opposed by the Committee pursuant to this section may not be adopted, and is not effective unless approved, by the Governor pursuant to subsection (c)(3) of this section.

### **State Government § 10-112. Procedures for publication**

(a) In general. --

(1) This subsection does not apply to the emergency adoption of a regulation.

(2) To have a proposed regulation published in the Register, a unit shall submit to the Administrator:

(i) the proposed regulation; and

(ii) a notice of the proposed adoption.

(3) The notice under this subsection shall:

(i) state the estimated economic impact of the proposed regulation on:

1. the revenues and expenditures of units of the State government and of local government units; and

2. groups such as consumer, industry, taxpayer, or trade groups;

(ii) include a statement of purpose;

(iii) satisfy the requirements of § 2-1505.2 of this article;

(iv) comply with § 7-113(c) of the Human Services Article; and

(v) give persons an opportunity to comment before adoption of the proposed regulation, by:

1. setting a date, time, and place for a public hearing at which oral or written views and information may be submitted; or

2. giving a telephone number that a person may call to comment and an address to which a person may send comments.

(4) (i) The estimated economic impact statement required under paragraph (3)(i) of this subsection shall state whether the proposed regulation imposes a mandate on a local government unit.

(ii) If the proposed regulation imposes a mandate, the fiscal impact statement shall:

1. indicate whether the regulation is required to comply with a federal statutory or regulatory mandate; and

2. include, in addition to the estimate under paragraph (3)(i)1 of this subsection, the estimated effect on local property tax rates, if applicable, and if the required data is available.

(b) Emergency adoption. -- As soon as the Committee approves emergency adoption of a regulation, the Committee shall submit the regulation to the Administrator.

(c) Form. -- If a regulation under this section amends or repeals an adopted regulation, the text of the regulation under this section shall show the changes with the symbols that the Administrator requires.

**State Government § 10-112.1. Publication time requirements for regulations.**

(a) In general. -- Whenever a unit publishes a proposed regulation in the Register in accordance with § 10-112 of this subtitle, the unit shall publish the text of the proposed regulation on the unit's Web site not later than 3 business days after the date that the proposed regulation is published in the Register.

(b) Emergency regulations. -- Whenever a unit submits a regulation to the Committee for approval as an emergency adoption in accordance with § 10-111(b) of this subtitle, the unit shall publish the text of the regulation on the unit's Web site not later than 3 business days after the date that the regulation is submitted to the Committee for approval of emergency adoption.

(c) Compliance requirements. -- To comply with the publication requirement of this section, a unit shall:

(1) publish the text of the regulation on the unit's home page on its Web site; or

(2) provide a link on the unit's home page to the text of the regulation if the text of the regulation is available elsewhere on the unit's Web site.

(d) Effect of failure to publish. -- The failure of a unit to publish the text of a regulation in a timely manner under this section may not invalidate or otherwise affect the adoption of the regulation.

**State Government § 10-113. Changes in proposed regulations.**

(a) "Unit counsel" defined. -- In this section, "unit counsel" has the meaning stated in § 10-107 of this subtitle.

(b) In general. -- If a unit wishes to change the text of a proposed regulation so that any part of the text differs substantively from the text previously published in the Register, the unit may not adopt the proposed regulation unless it is proposed anew and adopted in accordance with the requirements of §§ 10-111 and 10-112 of this subtitle.

(c) Symbology. -- If the regulation is proposed anew, the changes in the text shall be shown with the symbols that the Administrator requires.

(d) Certification of Attorney General. --

(1) The Administrator shall refuse to publish the notice of adoption of a regulation that differs from the text previously published unless the notice is accompanied by a certification from the Attorney General or the unit counsel that the provisions of subsections (b) and (c) of this section are not applicable.

(2) The certification shall:

- (i) be prepared in the form and according to guidelines specified by the Administrator;
- (ii) contain a description of the nature of each change and the basis for the conclusion; and
- (iii) be published in the Register as part of the notice of adoption.

### **State Government § 10-114. Notice of adoption**

(a) Required. -- After adopting a regulation, a unit shall submit to the Administrator a notice of adoption, for publication in the Register.

(b) Contents. -- If the text of the adopted regulation is the same or substantially similar to the proposed regulation, the notice shall:

- (1) state that the texts are the same or substantially similar;
- (2) cite the date of the Register in which the proposed regulation was published; and
- (3) show each change in the text with the symbols that the Administrator requires.

## **TRANSPORTATION**

### **TITLE 23. VEHICLE LAWS -- INSPECTION OF USED VEHICLES AND WARNINGS FOR DEFECTIVE EQUIPMENT**

#### **SUBTITLE 2. MOTOR VEHICLE EMISSIONS INSPECTION**

#### **Transportation § 23-207. Rules and regulations for implementation, administration, regulation, and enforcement of subtitle; required progress reports**

The Administration and the Secretary may jointly adopt rules and regulations as required for purposes of implementation, administration, regulation, and enforcement of the provisions of this subtitle, including rules and regulations that, consistent with federal law, exempt certain vehicles from the inspections and tests under this subtitle.

## Appendix B: Approval Letter

EPA Regional Administrator, Shawn Garvin to MDE regarding the approval of MDE's July 1, 2015 annual ambient air monitoring network plan.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

NOV 12 2015

The Honorable Benjamin H. Grumbles, Secretary  
Maryland Department of the Environment  
1800 Washington Boulevard  
Baltimore, Maryland 21230

Dear Secretary Grumbles:

By letter and enclosures dated July 1, 2015, the Maryland Department of Environmental (MDE) submitted to the U. S. Environmental Protection Agency (EPA) an annual ambient air monitoring network plan in accordance with the regulatory requirements of 40 CFR Part 58 - Ambient Air Quality Surveillance. Based on our review, EPA hereby approves MDE's July 1, 2015 annual ambient air monitoring network plan on the basis that the plan meets the requirements of 40 CFR Part 58.10.

Additionally, 40 CFR Section 58.11(c) requires any changes to the air monitoring network or design of the following air monitoring systems be approved by the EPA Administrator:

- a) Photochemical Assessment Monitoring Systems (PAMS)
- b) Particulate Matter Speciation Trends Network (STN)
- c) The National Core Monitoring Network (NCore)

EPA determined that MDE's July 1, 2015 annual ambient air monitoring network plan does not require approval from the EPA Administrator because there were no changes to any of the air monitoring systems listed above.

If you have any questions please do not hesitate to contact me or have your staff contact Mr. Matthew Colip, EPA's Maryland Liaison, at (215) 814-5439. For questions regarding this approval action, your staff may contact Mr. David L. Arnold, Acting Director, Air Protection Division, at (215) 814-2172.

Sincerely,

A handwritten signature in blue ink, appearing to read "Shawn M. Garvin".

Shawn M. Garvin  
Regional Administrator

cc: Mr. George S. Aburn, Jr., MDE

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## Appendix C: Maryland Maximum 24-Hour PM<sub>2.5</sub> Values

Year	County	Maximum 24-Hr PM <sub>2.5</sub> Values <sup>32</sup>
2012	Hagerstown, Washington County	38.3 µg/m <sup>3</sup>
2013	Hagerstown, Washington County	45.7 µg/m <sup>3</sup>
2014	Hagerstown, Washington County	35.3 µg/m <sup>3</sup>

### Maryland Maximum 2012-2014 24-Hour Design Value

County	24-Hour PM <sub>2.5</sub> Design Value <sup>33</sup>
Hagerstown, Washington County	26 µg/m <sup>3</sup>

<sup>32</sup> [http://www3.epa.gov/airdata/ad\\_rep\\_mon.html](http://www3.epa.gov/airdata/ad_rep_mon.html)

<sup>33</sup> <http://www3.epa.gov/airtrends/values.html>