



October 2023

## **Compliance Considerations for Site Energy Use Intensity Exceedance for Maryland**

### **Proposed Building Energy Performance Standards**

Industry representatives, including building owners, have expressed concerns regarding potential penalties owners could face under the Building Energy Performance Standards (“BEPS”) being proposed by the Maryland Department of the Environment (“MDE” or “Department”) pursuant to Title 2, Subtitle 16 of the Environment Article, Annotated Code of Maryland. This document is issued to clarify the options MDE would consider in the event a building exceeded in a given year a site energy use intensity (site EUI”) standard which was adopted as part of those regulations.

The Department’s goal is to obtain compliance with the statutes and regulations it is responsible for implementing by taking actions that help deter violations. To achieve this deterrence, the Department evaluates all instances of noncompliance on a case-by-case basis to determine the best course of action. When doing so, the Department has several compliance options.

First, the Department’s authority to pursue litigation for any particular violation is discretionary in nature. The Department may choose, on a case-by-case basis, to forego formal enforcement actions where particular situations warrant it, and instead work collaboratively with a member of the regulated community to obtain compliance as expeditiously as practicable.

Where, in the Department’s judgment, circumstances do not warrant additional time to come into compliance, MDE may choose to initiate formal enforcement. One option is to pursue the assessment of civil penalties in the Circuit Court for the County where a violation has occurred. Such penalties may be awarded following a trial at the presiding judge’s discretion based on equitable factors and in accordance with §2-610 of the Environment Article.

Alternatively, MDE may assess an administrative penalty following the opportunity for an informal conference, pursuant to §2-610.1 of the Environment Article. A total assessed administrative penalty for an EUI violation, determined by annual energy usage, may be no greater than \$50,000 and would be subject to contested case hearing and appellate review. MDE intends to determine an appropriate individual penalty rate on a fact-specific basis and in consideration of the following factors:



# Maryland

## Department of the Environment

Wes Moore, Governor  
Aruna Miller, Lt. Governor

Serena McIlwain, Secretary  
Suzanne E. Dorsey, Deputy Secretary

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 the 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;
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.

Additionally, the Department may consider approval of alternative compliance plans at the discretion of the Secretary where a building does not meet a site EUI standard, or any other aspect of the rule. Provided a building complies with a Department approved plan for compliance, that building may not be subject to action for a violation of applicable BEPS requirements pursuant to § 2-611 of the Environment Article, Annotated Code of Maryland. Approvable alternative plans will require sufficient documentation of circumstances which prevent compliance with the standards by the applicable regulatory timeframe.

Between the date the regulation is adopted and 2030, when the first interim standards become effective, the Department may consider more detailed forms and guidance regarding the alternative compliance plan options and acceptance criteria. In addition, the Department may consider further amendment of the BEPS regulations as additional information becomes available.

For more information visit

<https://mde.maryland.gov/programs/air/ClimateChange/Pages/BEPS.aspx> or contact [beeps.mde@maryland.gov](mailto:beeps.mde@maryland.gov).