

PROPOSED ACTION ON REGULATIONS

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purchase at the auction, not including any CO<sub>2</sub> CCR tier 1 or tier 2 allowances;

(b) If the condition of §B(2)(a) of this regulation is met at an auction, then the number of CO<sub>2</sub> CCR tier 1 allowances offered for sale by the Department at the auction shall be equal to the number of CO<sub>2</sub> CCR tier 1 allowances in the Consumer Energy Efficiency Account at the time of the auction;

(c) CO<sub>2</sub> CCR tier 2 allowances shall only be sold at an auction in which total demand for allowances, above the CCR tier 2 trigger price, exceeds the number of CO<sub>2</sub> allowances available for purchase at the auction, not including any CO<sub>2</sub> CCR tier 2 allowances;

(d) If the condition of §B(2)(c) of this regulation is met at an auction, then the number of CO<sub>2</sub> CCR tier 2 allowances offered for sale by the Department at the auction shall be equal to the number of CO<sub>2</sub> CCR tier 2 allowances in the Consumer Energy Efficiency Account at the time of the auction;

[(c)] (e) After all of the CO<sub>2</sub> CCR tier 1 allowances in the Consumer Energy Efficiency Account have been sold in a given calendar year, no additional CO<sub>2</sub> CCR tier 1 allowances will be offered for sale at any auction for the remainder of that calendar year, even if the condition of §B(2)(a) of this regulation is met at an auction;

(f) After all of the CO<sub>2</sub> CCR tier 2 allowances in the Consumer Energy Efficiency Account have been sold in a given calendar year, no additional CO<sub>2</sub> CCR allowances will be offered for sale at any auction for the remainder of that calendar year, even if the condition of §B(2)(c) of this regulation is met at an auction;

[(d)] (g) At an auction in which CO<sub>2</sub> CCR tier 1 allowances are sold, but no CO<sub>2</sub> CCR tier 2 allowances are sold, the reserve price for the auction shall be the CCR tier 1 trigger price; [and]

(h) At an auction in which CO<sub>2</sub> CCR tier 2 allowances are sold, the reserve price for the auction shall be the CCR tier 2 trigger price;

[(e)] (i) If the condition of §B(2)(a) of this regulation is not satisfied, no CO<sub>2</sub> CCR tier 1 or CO<sub>2</sub> CCR tier 2 allowances shall be offered for sale at the auction, and the reserve price for the auction shall be equal to the minimum reserve prices; and

(j) If the condition of §B(2)(c) of this regulation is not satisfied, no CO<sub>2</sub> CCR tier 2 allowances shall be offered for sale at the auction, and the reserve price for the auction shall be determined as follows:

(i) If the condition of §B(2)(a) of this regulation is met, the reserve price shall be equal to the CCR tier 1 trigger price; and

(ii) If the condition of §B(2)(a) of this regulation is not met, the reserve price shall be equal to the minimum reserve price.

(3) (text unchanged)

[(4)] The Department or its agent shall follow these rules for the withholding of CO<sub>2</sub> ECR allowances from an auction:

(a) CO<sub>2</sub> ECR allowances shall only be withheld from an auction if the demand for allowances would result in an auction clearing price that is less than the ECR trigger price prior to the withholding from the auction of any ECR allowances;

(b) If the condition in §B(4)(a) of this regulation is met at an auction, then the maximum number of CO<sub>2</sub> ECR allowances that may be withheld from that auction will be equal to the quantity described in COMAR 26.09.02.03D(1) minus the total quantity of CO<sub>2</sub> ECR allowances that have been withheld from any prior auction in that calendar year; and

(c) Any CO<sub>2</sub> ECR allowances withheld from an auction will be transferred into the Emission containment reserve account.]

SERENA MCILWAIN  
Secretary of the Environment

Notice of Proposed Action

[25-179-P]

The Secretary of the Environment proposes to amend:

(1) Regulation .19 under COMAR 26.11.02 Permits, Approvals, and Registration; and

(2) Regulation .02 under COMAR 26.28.02 Benchmarking and Reporting.

Statement of Purpose

The purpose of this action is to update permit and reporting fees per legislation recently passed in the 2025 session. The Maryland Department of the Environment (MDE or the Department) proposes to increase the emissions-based rate fee for our Air and Radiation Administration's Operating Permits and remove an expired maximum \$500,000 annual cap on permit to operate fees for any source as well as add an annual reporting fee under the Subtitle Building Energy Performance Standards (BEPS).

This action will not be submitted to the U.S. Environmental Protection Agency (EPA) for approval as part of Maryland's State Implementation Plan (SIP).

Background.

Per the Federal Clean Air Act (CAA) of 1989, facilities with significant sources of air pollution or those that have the potential to cause harm, based on the nature of their emissions, are required to obtain an operating permit. MDE has collected emissions-based fees from sources having a federal or a state operating permit, and these fees have been deposited into the Maryland Clean Air Fund ("the Fund" or "CAF") since that time. The Fund is a special revenue fund that began receiving receipts from penalties on July 1, 1988, and later from emission-based operating permit fees. The Fund's revenues are for activities under Title 2 of the Environment Article related to identifying, mitigating, monitoring, reducing, and regulating air pollution in Maryland, including program development of these activities. Historically, MDE's overall clean air programs were funded through a mixture of funding sources: the Clean Air Fund, federal grants, reimbursable funds from the Maryland Department of Transportation and the Maryland Department of Natural Resources, and general funds.

COMAR 26.11.02.19 establishes annual fees for pollution sources that are required to obtain a federal Title V - Part 70 Operating Permit or an Air Quality State Permit to Operate. The annual fee consists of a base fee plus an emissions-based fee for each ton of regulated emissions from the source. State Permit to Operate sources include asphalt plants, academic institutions, crematories, and aggregate operations. Title V - Part 70 Operating Permit sources are the largest air pollution sources in the State. These sources include power plants, cement plants, chemical plants, and federal facilities. In addition to large emission sources, certain smaller, environmentally significant sources are required to obtain Title V - Part 70 Operating Permits (e.g. incinerators and landfills).

Per the Climate Solutions Now Act (CSNA) of 2022, Maryland, specifically the Department, is required to establish BEPS for covered buildings to achieve zero net direct greenhouse gas emissions and energy use intensity standards by 2040. On May 25, 2025, House Bill 49 was enacted under the Environmental Article II, § 17(c) of the Maryland Constitution. Among other alterations to the BEPS program that will be enacted via future rulemakings after extensive study, House Bill 49 requires MDE to update COMAR 26.28 to include a \$100 annual reporting fee for a building subject to BEPS. This fee is indexed to the consumer price index and as such adjusted for inflation each year. The fee covers the administrative costs of implementing the BEPS program.

On May 13, 2025, Governor Moore signed Senate Bill 250 or the Department of the Environment - Fees, Penalties, Funding, and Regulation Act enacting into law an increase of the emissions-based

fee from not exceeding \$50.00 per ton to not exceeding \$200.00 per ton and removing a \$2M cap on carrying over unused funds in the Clean Air Fund at the end of each fiscal year. Effective June 1, 2025, the emissions-based fee rate has increased to \$200.00 per ton and may be adjusted in the future to reflect changes in the Consumer Price Index (CPI). For information purposes, the CPI adjustment increase applied on January 1, 2025 was 3.2 percent. The Act also removes an expired maximum \$500,000 annual cap on permit to operate fees for any source. Additionally, the Act locks in the Clean Air Funds by adding the following under the Environmental Article §2-107(c)(4) "MONEY DEPOSITED INTO THE FUND IS NOT SUBJECT TO §7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE AND MAY NOT REVERT TO THE GENERAL FUND OF THE STATE." This supports the activities of the Department and solidifies the funding for the Clean Air Act programs.

Following these legislative changes, MDE needs to amend regulation COMAR 26.11.02.19 and COMAR 26.28.02.02 to align with the adopted laws.

Sources Affected

Air pollution sources located throughout the State that are required to maintain a federal Title V - Part 70 Operating Permit or a State Permit to Operate will be affected. There are currently 108 Title V - Part 70 Operating Permit sources and 368 State Permit to Operate sources regulated by the MDE Air and Radiation Administration. Buildings covered by BEPS, generally those 35,000 square feet or larger in the State of Maryland, will need to file a report and pay the \$100 per year per building. Requirements

The proposed amendments to COMAR 26.11.02.19 provide for emission rate fees to be calculated at \$200.00 per ton and to remove an outdated cap applied to facilities until 2009. Implementation effective dates are set to meet the legislative requirements. The emission fee shall be adjusted annually beginning in 2027 per the Consumer Price Index (as calculated per §B(5) of COMAR 26.11.02.19).

The proposed amendments to COMAR 26.28.02.02 require each building that is 35,000 square feet or larger and subject to BEPS to pay the Department a \$100 fee, starting in 2026. The fee is due June 1 of each year. Buildings will need to do this in addition to the existing requirements to submit their annual benchmarking report to be in compliance with the regulation. This fee is adjusted by the Consumer Price Index each year.

Projected Emission Reductions

COMAR 26.11.02.19 is an emissions-based fee schedule for sources with a federal Title V - Part 70 Operating Permit or State Permit to Operate. This amendment does not affect emissions but rather determines a fee based on actual emissions emitted. This amendment does not directly affect the emissions from BEPS-covered buildings. However, the fee will support the implementation of the BEPS program, which has substantial projected emissions reductions.

Federal Equivalent Standard

MDE is required by the EPA to collect sufficient fees to fund all reasonable Title V federal operating permit program costs (See 40 CFR §70.9). There is no corresponding federal requirement relating to emission-based fees for State Permits to Operate. There is no corresponding federal requirement relating to the annual reporting fee for BEPS.

Estimate of Economic Impact

**I. Summary of Economic Impact.** This action codifies the Department of the Environment—Fees, Penalties, Funding, and Regulation Act. This action adjusts an air emissions fee that will affect permitted air emissions sources in Maryland by increasing emission-based fees for those sources required to pay such fees and will provide revenue to MDE to administer the required permit

program. The majority of permitted affected sources are not small businesses and the increase is not expected to be impactful. This action will have a minimal economic impact on local governments. Owners of BEPS-covered buildings, which could include small businesses, local government, and others, will see a minimal economic impact from the \$100 per building per year reporting fee.

II. Types of Economic Impact.

Impacted Entity	Revenue (R+/R-) Expenditure (E+/E-)	Magnitude
A. On issuing agency:		
Maryland Department of the Environment	(R+)	\$2.6 million per year
B. On other State agencies:		
C. On local governments:		
D. On regulated industries or trade groups:		
Undefined	(-)	\$2.6 million per year
E. On other industries or trade groups:		
F. Direct and indirect effects on public:		

Benefit (+)  
Cost (-)      Magnitude

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A. This action will add revenue to MDE. The permit fees are estimated at \$1.9M per year as calculated utilizing emissions of regulated pollutants from affected sources for the previous 2 years. The BEPS benchmarking annual reporting fees are estimated at \$700,000 based on the approximately 7,000 covered buildings in the State, that are not in Montgomery County or are expected to be exempt.

D. This action will affect permitted air emissions sources in Maryland. The fee increase will impact approximately 470 sources with an estimated total cost of \$1.9M per year, and about 7,000 covered buildings with an estimated total cost of \$700,000 due to the \$100 per year benchmarking report fee. Some of the buildings and permitted facilities are owned by local governments, the State of Maryland, and the federal government.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Carolyn Jones, Chief, Division of Regulation Development, MDE, Air and Radiation Administration, 1800 Washington Blvd, 7th Floor, Baltimore MD, 21230, or call 410-537-4210, or email to [airregulations.mde@maryland.gov](mailto:airregulations.mde@maryland.gov). Comments will be accepted through January 5, 2026. The Department of the Environment will hold a virtual public hearing on the proposed action on January 5, 2026 at 1pm. See the Department's website for virtual hearing information, <https://mde.maryland.gov/programs/Regulations/air/Pages/reqcomments.aspx>

## Subtitle 11 AIR QUALITY

### 26.11.02 Permits, Approvals, and Registration

Authority: Environment Article, §§1-101, 1-404, 1-601—1-606, 2-101—2-103, 2-301—2-303, and 2-401—2-404, Annotated Code of Maryland

#### .19 Fee Schedule: Title V Permit or a State Permit to Operate.

A. (text unchanged)

B. Method of Calculating Fees.

(1) The emission-based fee prescribed in §A of this regulation shall be calculated by multiplying the total weight of actual annual emissions in tons of regulated emissions times an amount in dollars per ton as prescribed below:

[(a) From January 1, 1997 through September 30, 2008: \$25 per ton as increased pursuant to §B(6) of this regulation;]

[(b)] (a) From October 1, 2008 through [December 31, 2008] *May 31, 2025*: \$50 per ton as increased pursuant to §B(5) of this regulation;

(b) *From June 1, 2025 through December 31, 2026: \$200 per ton;* and

(c) Beginning January 1, [2009] *2027*: [50] *\$200* per ton as increased pursuant to [§B(6)] *§B(5)* of this regulation.

(2) (text unchanged)

[(3) Effective October 1, 2008 through December 31, 2009, the maximum annual permit to operate fee for each plant or facility is \$500,000.]

[(4)] (3) Except as provided in [§B(5)] *§B(4)* of this regulation, the total weight of annual emissions used to calculate the annual permit fee is based on the total actual emission tonnages as certified by the source and verified by the Department. Annual emissions shall be rounded off to the nearest ton.

[(5)] (4)— [(6)] (5) (text unchanged)

C.— E. (text unchanged)

## Subtitle 28 BUILDING ENERGY PERFORMANCE STANDARDS

### 26.28.02 Benchmarking and Reporting

Authority: Environment Article, §§1-404, 2-301, 2-302, 2-1205, 2-1602, Annotated Code of Maryland

#### .02 Reporting Requirements of Building Owners.

A.—D. (text unchanged)

E. *Annual Reporting Fee.*

(1) *A building owner shall pay an annual reporting fee for each covered building as defined in Environment Article, §2-1601, Annotated Code of Maryland.*

(2) *The annual reporting fee is due by June 1st of each year beginning in 2026.*

(3) *In 2026, the annual reporting fee is \$100.*

(4) *Beginning in 2027 and each year thereafter, the annual reporting fee is \$100 as adjusted for inflation pursuant to §E(5) of this regulation.*

(5) *Consumer Price Index.*

(a) *The annual reporting fee rate set forth in this chapter shall be increased each calendar year by the percentage, if any, by which the Consumer Price Index for the most recent calendar year exceeds the Consumer Price Index for the previous calendar year.*

(b) *The Consumer Price Index for any calendar year is the 12-month average of the Consumer Price Index for all urban consumers published by the U.S. Department of Labor.*

SERENA MCILWAIN  
Secretary of the Environment