



**MARYLAND DEPARTMENT OF THE ENVIRONMENT**

1800 Washington Boulevard • Baltimore MD 21230

410-537-3000 • 1-800-633-6101

Martin O'Malley  
Governor

Robert M. Summers, Ph.D.  
Secretary

Anthony Brown  
Lt. Governor

***Maryland State Implementation Plan for Clean Air Act  
Section 110(a)(2) for Nitrogen Dioxide and Section 128  
for all National Ambient Air Quality Standards***

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

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**Prepared by:  
Maryland Department of the Environment**



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## MARYLAND CLEAN AIR ACT SECTIONS 110(a)(2) AND 128

### 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 where the §110(a)(2) requirements for the 2010 revised NO<sub>2</sub> NAAQS are addressed in Maryland’s current SIP or pending SIP revisions.

*This submittal addresses Maryland's obligations under §128 for all NAAQS and addresses §110(a)(2) of the Clean Air Act specifically for the following standard:*

**NO<sub>2</sub>:** On January 22, 2010, EPA substantially strengthened the health-based National Ambient Air Quality Standard (NAAQS) for nitrogen dioxide (NO<sub>2</sub>)<sup>1</sup>. To supplement the existing annual standard, EPA set a new 1-hour NO<sub>2</sub> standard at the level of 100 parts per billion (ppb), based on the 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. High levels of NO<sub>2</sub> contribute to respiratory problems in sensitive individuals. Also, on January 22, 2010, EPA proposed revisions to the NO<sub>2</sub> monitoring requirements pertaining to where state and local monitoring agencies would be required to conduct NO<sub>2</sub> monitoring. This final rule

<sup>1</sup> See “Primary National Ambient Air Quality Standards for Nitrogen Dioxide,” Final Rule, 75 FR 6473, 9 February 2010, and 40 CFR Parts 50 and 58

became effective on April 12, 2010. (See <http://www.epa.gov/ttn/naaqs/standards/nox/fr/20100209.pdf>.)

## 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>2</sup> Note that Maryland’s submittal for §110(a)(2)(E)(ii) of the CAA also addresses §128 of the CAA.

### Clean Air Act § 110(a)(2)(A)

*§ 110(a)(2)(A), Emission limits and other control measures: Requires SIPs to 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.*

- 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 under 40 CFR 52.1070(c), are shown in the table below. Note that the control measures below, cited as EPA-approved, are limited to the current SIP-approved portions of COMAR and the Annotated Code of Maryland.

COMAR Subtitle/ Chapter	Chapter Name	NO <sub>2</sub>	Remarks
26.11.01	General Administrative Provisions		Administrative provisions
26.11.02	Permits, Approvals, and Registration <sup>3</sup>	.11A(1)(b), 12A(1)	Administrative provisions
26.11.04	Ambient Air Quality Standards <sup>4</sup>	.02	

<sup>2</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 Lead (Pb) National Ambient Air Quality Standards (NAAQS),” Memorandum from Stephen D. Page, Office of Air Quality Planning and Standards (Washington, DC: U.S. Environmental Protection Agency, October 14, 2011) 2.

<sup>3</sup> Maryland's permit fee requirements under COMAR 26.11.02 Regulations .16-.19 are not part of Maryland's SIP.

<sup>4</sup> On February 11, 2013, 78 Fed. Reg. 9593 and 78 Fed. Reg. 9650, EPA issued a direct final rule and proposed rule, respectively, approving Maryland SIP revisions to COMAR 26.11.04. As of the close of the comment period on March 13, 2013, EPA had not received any adverse comments on the proposed/direct final rule; as a result, the direct final rule will be effective on April 12, 2013 without further notice. Note that in these changes to Maryland’s regulations, the NAAQS are being incorporated by reference prospectively in order for Maryland’s ambient air quality standards to be identical to the federal standards at all times.

COMAR Subtitle/Chapter	Chapter Name	NO <sub>2</sub>	Remarks
26.11.06	General Emissions Standards, Prohibitions, and Restrictions	.15	Administrative provisions: .10, .14 <sup>5</sup>
26.11.09	Control of Fuel-Burning Equipment, Stationary Internal Combustion Engines, and Certain Fuel-Burning Installations	.08	Control of NOx Emissions for Major Stationary Sources
26.11.27	Emission Limitations for Power Plants	.02, .03, and .05	Administrative provisions: .01 & .06
11.14.08	Vehicle Emissions Inspection Program		Maryland Dept. of Transportation (MDOT)/Motor Vehicle Administration (MVA) program
20.79	Applications Concerning the Construction or Modification of Generating Stations and Overhead Transmission Lines		Maryland Public Service Commission (PSC) program
Annotated Code of Maryland, Article		Sections	
Public Utilities	§ 7-205, Electric companies – Modification of power plant; § 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.		

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

### **Clean Air Act § 110(a)(2)(B)**

*§ 110(a)(2)(B), Ambient air quality monitoring/data system: Requires SIPs to include provisions for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, compile, and analyze data on ambient air quality, and upon request, make such data available to the EPA Administrator.*

- 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). On

<sup>5</sup> Maryland's prevention of significant deterioration (PSD) requirements are under COMAR 26.11.06.14, with related definitions under COMAR 26.11.01.01B(37). Maryland has revised its "PSD sources" regulations to refer to any new or modified source subject to the provisions of 40 CFR 52.21, as amended. This regulation revision will take effect in late June 2013, at which time it will be submitted to EPA for SIP approval.

February 11, 2013, 78 Fed. Reg. 9593 and 78 Fed. Reg. 9650, EPA issued a direct final rule and proposed rule, respectively, approving Maryland SIP revisions to COMAR 26.11.04. As noted in the footnotes, above, for the Clean Air Act § 110(a)(2)(A) section of this SIP, the direct final rule will be effective on April 12, 2013, without further notice. Note that in these changes to Maryland's regulations, the NAAQS are being incorporated by reference prospectively in order for Maryland's ambient air quality standards to be identical to the federal standards at all times.

- 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.
- To address the requirements of 40 CFR Part 58, Appendix D, Section 4.3.2 "Requirement for Near-road NO<sub>2</sub> Monitors" (October 9, 2012), and 78 Fed. Reg. 16184, March 14, 2013, "Revision to Ambient Nitrogen Dioxide Monitoring Requirements," Maryland is installing two additional near-road monitors in the Baltimore Core-Based Statistical Area (CBSA). The first monitor is to be operational by January 1, 2014, and the second by January 1, 2015, in accordance with 78 Fed. Reg. 16184, March 14, 2013. Maryland has been designated "unclassifiable" for the NO<sub>2</sub> NAAQS until the EPA-funded monitors are installed and data from the near-roadway monitors can be reviewed.

The Washington, DC CBSA, which includes Maryland, Virginia and the District of Columbia, will also be required to have two near-road monitors. Virginia and the District of Columbia have undertaken this responsibility.

- To meet the requirements of 40 CFR Part 58, Appendix D, Section 4.3.3 "Requirement for Area-wide NO<sub>2</sub> Monitoring" (October 9, 2012), Maryland is currently operating and plans to continue operating a Photochemical Assessment Monitoring Station (PAMS) monitor.
- Maryland has an EPA-approved ambient air monitoring network (see the attached EPA approval letter).
- 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 NO<sub>2</sub>, NO, NO<sub>y</sub>, and NO<sub>x</sub>. The reports comply with the federal 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 emission limitations and other control measures, and schedules for compliance; regulation of modification and construction of stationary sources necessary to reach attainment with NAAQS, including prevention of significant deterioration (PSD), and non-attainment new source review (NNSR) permit programs*

Note: In accordance with EPA guidance,<sup>6</sup> 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.

- 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.

<sup>6</sup> See for example 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 Lead (Pb) National Ambient Air Quality Standards (NAAQS)," Memorandum from Stephen D. Page, Office of Air Quality Planning and Standards (Washington, DC: U.S. Environmental Protection Agency, October 14, 2011) 2.



- 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”). Among other elements, the HAA contains NO<sub>x</sub> emissions reductions for certain electric generating units.
- Maryland’s provisions for the enforcement of its Vehicle Emissions Inspection Program are found in section 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 and prevention of significant deterioration (PSD) approval program requirements are found in COMAR 26.11.02, which also contains enforcement provisions for violations of permits to construct, PSD approvals, and operating permits.
- 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). Maryland has revised its "PSD sources" regulations to refer to any new or modified source subject to the provisions of 40 CFR 52.21, as amended. This regulation revision will take effect in late June 2013, at which time it will be submitted to EPA for SIP approval.
- The previous SIP revision for PSD was approved by EPA on August 2, 2012 (77 FR 45949); that SIP revision concerned implementation of the requirements of the Environmental Protection Agency's final PSD and Title V Greenhouse Gas Tailoring Rule, which was published in the Federal Register on June 3, 2010 (75 FR 31514). MDE’s SIP Revision included amendments to the following: (1) Regulation .01 under COMAR 26.11.01 General Administrative Provisions; (2) Regulations .01 and .12 under COMAR 26.11.02 Permits, Approvals, and Registration; and (3) Regulation .14 under COMAR 26.11.06 General Emission Standards, Prohibitions, and Restrictions.
- 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.

- 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), Interstate transport:** *Requires SIPs to include provisions prohibiting emissions of air pollutants in amounts that contribute significantly to nonattainment or interfere with maintaining the NAAQS in another state, or interfere with measures required to prevent significant deterioration of air quality or protect visibility in another state.*

**D (i) SIPs must “contain adequate provisions prohibiting... 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*
- (II) *interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility.”*

The CAA requires each state to address section 110 after a NAAQS has been promulgated. Maryland understands that EPA is developing guidance on section 110(a)(2)(D), the transport portion of infrastructure SIPs, but this guidance has not been released yet. This SIP submittal represents a demonstration of compliance with § 110(a)(2)(D) from Maryland that is consistent with what we believe the new guidance must require and what other states must submit to satisfy 110(a)(2)(D) provisions.

Maryland meets the § 110(a)(2)(D)(i) good neighbor obligations. For non-attainment areas, Maryland has implemented numerous planning requirements designed to achieve compliance with the NAAQS. EPA approved the § 110(a)(2)(D) requirements in Maryland’s previous infrastructure SIPs.

The following statutory and regulatory provisions are designed to ensure Maryland complies with § 110(a)(2)(D)(i)(I):

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.

*Additional Maryland Control Measures*

Maryland has regulated emissions from its mobile sector by jointly adopting, with the Maryland Department of Transportation, an enhanced vehicle emissions inspection and maintenance program (COMAR 11.14.08); and by enacting the Maryland Clean Cars Act of 2007 and the Low Emissions Vehicle Program (sections 2-1101 – 2-1107 of the Environment Article of the Annotated Code of Maryland), with implementing regulations at COMAR 26.11.34 (Low Emissions Vehicle Program<sup>7</sup>) and COMAR 26.11.20.04 (National Low Emission Vehicle Program), and COMAR 26.11.20.03 (reformulated gasoline in on-road vehicles).

The State has also pursued significant regulation of non-EGU industrial sources. Pursuant to the requirements of CAA § 182(b)(2), Maryland has implemented RACT controls on all “major” stationary sources emitting 25 tons per year or more of VOCs or NO<sub>x</sub>. Please see the table below for a listing of NO<sub>x</sub> RACT regulations.

Source Category	Code of Maryland Regulations (COMAR) Citation	SIP # & SIP Final Date(s) Approved by EPA
<b>COMAR Title: Control of NO<sub>x</sub> Emissions for Major Stationary Sources COMAR 26.11.09.08</b>		
Fuel-Burning Equipment Located at Major Sources – General Requirements and Conditions	26.11.09.08A&B	SIP 00-06, 2/8/2001
Fuel-Burning Equipment with a Rated Heat Input Capacity of 250 MMBtu/hr or Greater	26.11.09.08C	SIP 00-06, 2/8/2001
Fuel-Burning Equipment with a Rated Heat Input Capacity of Less than 250 MMBtu/hr and Greater than 100 MMBtu/hr	26.11.09.08D	SIP 00-06, 2/8/2001 SIP 02-06, 5/1/2003
Fuel-Burning Equipment with a Rated Heat Input Capacity of 100 MMBtu/hr or Less	26.11.09.08E	SIP 00-06, 2/8/2001
Space Heaters	26.11.09.08F	SIP 00-06, 2/8/2001
Fuel-Burning Equipment with a Capacity Factor of 15 Percent or Less	26.11.09.08G(1)	SIP 00-06, 2/8/2001
Combustion Turbines with a Capacity Factor Greater than 15 Percent	26.11.09.08G(2)	SIP 00-06, 2/8/2001
Hospital, Medical, and Infectious Waste Incinerators (HMIWI)	26.11.09.08H(4)	SIP 00-06, 2/8/2001
Municipal Waste Combustors (MWC)	26.11.09.08H(3)	SIP 00-06, 2/8/2001

<sup>7</sup> Note that COMAR 26.11.34 is not part of Maryland's EPA-approved SIP and is mentioned here for reference purposes only.

Source Category	Code of Maryland Regulations (COMAR) Citation	SIP # & SIP Final Date(s) Approved by EPA
Glass Melting Furnaces	26.11.09.08I(1)&(2)	SIP 00-06, 2/8/2001
Industrial Furnaces and Other Miscellaneous Installations that Cause Emissions of NO <sub>x</sub>	26.11.09.08J	SIP 00-06, 2/8/2001
Kraft Pulp Mills	26.11.09.08C(2)(h) <sup>‡</sup>	SIP 00-06, 2/8/2001
Portland Cement Manufacturing Plants	26.11.09.08H(1)&(2) <sup>‡</sup>	SIP 00-06, 2/8/2001
Stationary Internal Combustion Engines at Natural Gas Compression Stations	26.11.09.08I(3)&(4) <sup>‡</sup>	SIP 00-06, 2/8/2001

<sup>‡</sup>RACT requirements for this source also exist under the COMAR 26.11.09.08 citation.

### *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):

- Maryland’s pre-construction permitting and PSD approval requirements are found in COMAR 26.11.02.
- 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 recently 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. This regulation revision will take effect in late June 2013, at which time it will be submitted to EPA for SIP approval.
- 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.

**(D) (ii): 126 and 115 Plans:** Insure compliance with the applicable requirements of Clean Air Act §§ 126 and 115 (interstate and international pollution abatement).

Section 126(a) states that the SIP “shall (1) require each major proposed new or modified source... which may significantly contribute to pollution in excess of the NAAQS... to provide written notice to all nearby States the pollution levels of which may be affected by such source...,” and, (2) “identify all major existing stationary sources which may have the impact described in (1)... and provide notice to all nearby States of the identity of such sources.” Section 126(b) gives States the authority to petition EPA “for a finding that any major source or group of stationary sources emits... any pollutant in violation of Sec. 110(a)(2)(D)(ii) or this section.” Section 126(c) delineates requirements upon these major sources.

Section 115(a) states, “Whenever EPA, upon receipt of reports, surveys or studies... has reason to believe that any pollutants emitted in the U.S. cause or contribute to pollution which may... endanger public health or welfare in a foreign country... EPA shall give formal notification to the Governor of the State in which such emissions originate. (b) The EPA notice shall be deemed to be a finding under § 110(a)(2)(H)(ii) which requires a plan revision... Any foreign country so affected... shall be invited to appear at any public hearing associated with... revision of the... applicable plan.” Section 115(c) limits the applicability of this section to foreign countries that have given the U.S. the same rights as far as air pollution control. Section 115(d) refers to pollutants “for which no NAAQS has been established under CAA § 109...”

**Maryland Requirement:**

- 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.
- Maryland’s PSD requirements are in COMAR 26.11.06.14. Maryland confirms that new major sources and major modifications in the state are subject to PSD under 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) are in COMAR 26.11.01.01, COMAR 26.11.02.01, and COMAR 26.11.02.12.

- Maryland recently 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. This regulation revision will take effect in late June 2013, at which time it will be submitted to EPA for SIP approval.
- In addition, nothing in Maryland's statutory or regulatory authority prohibits or otherwise interferes with Maryland's ability to exercise §§126 and 115 of the Clean Air Act. Neither Maryland nor any major source in Maryland is currently subject to any active finding under Section 126 or 115 of the CAA with respect to any air pollutant, and there are no final findings against Maryland under Section 115 of the CAA.

### **Clean Air Act §§ 110(a)(2)(E) and 128**

*§ 110(a)(2)(E), Adequate resources, state boards, and authority; and § 128, State Boards: Requires states to provide for adequate personnel, funding, and legal authority under state law to carry out its SIP-related issues. This section also requires that state boards meet requirements under § 128 and that the state shall remain responsible for any portions of the SIP carried out by other organizations, such as local agencies.*

**(E) (i) Adequate resources (legal, personnel and funding):** Requires the SIP to provide “necessary assurances that the state [or local government or a regional agency] will have adequate personnel, funding, and authority under state law to carry out such implementation plan (and is not prohibited by any provision of federal or state law from carrying out such implementation plan or portion thereof).”<sup>8</sup>

As of 2013, in Maryland, the resources to carry out MDE’s NO<sub>2</sub> SIP are provided as follows:

- Maryland receives Section 105 and 103 grants annually. These grants include funds for implementation of the NO<sub>2</sub> SIP, including SIP development and NO<sub>2</sub> monitoring (see below). 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.
- Maryland is required to install two additional monitors in the Baltimore area for the purpose of near-road monitoring for NO<sub>2</sub>. The first monitor is required to be operational by 1/1/2014, and the second by 1/1/2015. For installation of the first monitoring site, Maryland has received a one-time Section 103 grant from EPA.

<sup>8</sup> See 42 U.S. Code 7410(a)(2)(E)(i)

For the second, Maryland is expected to receive another Section 103 grant for site installation.

- 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 NO<sub>2</sub> plan implementation.
- MDE receives additional funding from the Maryland Department of Transportation annually; this helps to fund Transportation Related Air Pollution Programs (TRAPP) efforts, including staff support, transportation conformity, emissions modeling, diesel emission reduction programs, and development of emission reduction strategies, such as for NO<sub>x</sub>.
- Funds are received annually 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 Department of Natural Resources (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 siting and modification of power plants and conducts research regarding the impacts of power plants on air quality.
- Maryland Department of the Environment's (MDE) Air and Radiation Management Administration (ARMA) currently has 141 personnel on staff in its air and support/operational services programs involved with carrying out various aspects of the SIP with respect to NO<sub>2</sub> requirements. This staff carries out various requirements of the NO<sub>2</sub> SIP.
- The Maryland Vehicle Emissions Inspection Program, a program of the Motor Vehicle Administration of the Maryland Department of Transportation, charges a fee for motor vehicle inspections. These fees pay the costs of the program, which ensures that automobiles and light trucks are properly maintained, thereby limiting their emissions of carbon monoxide and ozone precursors such as NO<sub>x</sub>.
- The Maryland Department of Transportation also receives federal funding from the Federal Transit Administration (FTA) and Federal Highway Administration (FHWA) for transit and highway programs that reduce emissions of NO<sub>x</sub> in the state. An example is the Congestion Mitigation and Air Quality Improvement (CMAQ) program.

- 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.
- The following statutory provisions authorize MDE, along with MDOT and the PSC, to develop and implement the Maryland NO<sub>2</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 - consultation advice to 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.

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 MDOT to adopt rules and regulations for implementation, administration, and regulation of programs, such as Maryland’s Vehicle Emissions Inspection Program: § 23-207 of the Transportation Article, Annotated Code of Maryland.

Authority for MDOT to set fees for vehicle inspections and testing; a portion of the fees covers the cost of administration and enforcement of the vehicle



emissions control program: § 23-205 of the Transportation Article, 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.

**(E) (ii) Boards:** Requires that the SIP provide, “requirements that the State comply with the requirements respecting State boards under § 128<sup>9</sup>.”

- 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.
- The Annotated Code of Maryland provisions below address the requirements of CAA §§ 110(a)(2)(E)(ii) and 128, the disclosure of potential conflicts of interest

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<sup>9</sup> § 7428. State boards

(a)<sup>1</sup> Not later than the date one year after August 7, 1977, each applicable implementation plan shall contain requirements that—

(1) any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under this chapter, and

(2) any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

A State may adopt any requirements respecting conflicts of interest for such boards or bodies or heads of executive agencies, or any other entities which are more stringent than the requirements of paragraph (1) and (2), and the Administrator shall approve any such more stringent requirements submitted as part of an implementation plan.

(July 14, 1955, ch. 360, title I, § 128, as added Pub. L. 95–95, title I, § 125, Aug. 7, 1977, 91 Stat. 725.)

EFFECTIVE DATE Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.)

<sup>1</sup>So in original. Probably should be “calendar year”.

<sup>1</sup>So in original. Section enacted without a subsec. (b).

of the agency heads of the Maryland Department of the Environment and the Maryland Public Service Commission. Note that these provisions address CAA § 128 for all of the NAAQS:

*State Government Article (2012), Annotated Code of Maryland*

*STATE GOVERNMENT  
TITLE 15. PUBLIC ETHICS  
SUBTITLE 1. FINDINGS; DEFINITIONS; GENERAL PROVISIONS*

**§ 15-102. Definitions**

*(a) In general. -- In this title the following words have the meanings indicated unless:*

*(1) the context clearly requires a different meaning; or*

*(2) a different definition is adopted for a particular provision.*

...

*(bb) Official. -- "Official" means either a State official or a public official.*

...

*(ff) Public official. -- "Public official" means an individual determined to be a public official in or pursuant to § 15-103 of this subtitle.*

...

*(ll) State official. -- "State official" means:*

*(1) a constitutional officer or officer-elect in an executive unit;*

*(2) a member or member-elect of the General Assembly;*

*(3) a judge or judge-elect of a court under Article IV, § 1 of the Constitution;*

*(4) a judicial appointee as defined in Maryland Rule 16-814;*

*(5) a State's Attorney;*

*(6) a clerk of the circuit court;*

*(7) a register of wills; or*

*(8) a sheriff.*

(Subsections of Sec. 15-102 not included above are not part of this plan.)

*State Government Article § 15-103 (2012), Annotated Code of Maryland*

**§ 15-103. Designation of individuals as public officials**

*(a) Generally. -- The determination of whether an individual is a "public official" for the purposes of this title shall be made in accordance with the provisions of this section.*

*(b) Public officials of executive units. -- Except as provided in subsection (f) of this section, the following individuals in executive units are public officials:*

*(1) an individual who receives compensation at a rate equivalent to at least State grade level 16, or who is appointed to a board, if the Ethics Commission determines under § 15-208 of this title that:*

*(i) the individual, acting alone or as a member of an executive unit, has decision making authority or acts as a principal advisor to one with that authority:*

*1. in making State policy in an executive unit; or*

*2. in exercising quasi-judicial, regulatory, licensing, inspecting, or auditing functions; and*

*(ii) the individual's duties are not essentially administrative and ministerial;*

*(2) any other individual in an executive unit, if the Ethics Commission determines that the individual, acting alone or as a member of the executive unit, has decision making authority or acts as a principal advisor to one with that authority in drafting specifications for, negotiating, or executing contracts that commit the State or an executive unit to spend more than \$ 10,000 in a year;*

*(3) a member, appointee, or employee of the Maryland Stadium Authority;*

*(4) a member, appointee, or employee of the Canal Place Preservation and Development Authority; and*

*(5) a member of the Emergency Medical Services Board.*

*...*

*(f) Exceptions. -- The following are not public officials:*

*(1) a State official;*

*(2) an individual employed on a contractual basis unless the individual is:*

*(i) employed on a full-time basis for more than 6 months; and*

*(ii) designated pursuant to subsection (b)(1) or (c) of this section; and*

*(3) a part-time or full-time faculty member at a State institution of higher education:*

*(i) as to subsection (b)(2) of this section, only when the individual is acting in the capacity of a faculty member; and*

*(ii) as to any other provision of this section, unless the individual also:*

1. is employed in another position that causes the individual to be designated as a public official;  
or

2. directly procures, directly influences, or otherwise directly affects the formation or execution of any State contract, purchase, or sale, as established by regulations adopted by the Ethics Commission and approved by the Joint Committee on Administrative, Executive, and Legislative Review.

(Subsections of Sec. 15-103 not included above are not part of this plan.)

*State Government Article (2012), Annotated Code of Maryland*

STATE GOVERNMENT  
TITLE 15. PUBLIC ETHICS  
SUBTITLE 6. FINANCIAL DISCLOSURE

**§ 15-601. Individuals required to file statement**

(a) Officials and candidates. -- Except as provided in subsections (b) and (c) of this section, and subject to subsections (d) and (e) of this section, each official and candidate for office as a State official shall file a statement as specified in §§ 15-602 through 15-608 of this subtitle.

**§15-602. Financial disclosure statement -- Filing requirements**

(a) Except as otherwise provided in this subtitle, a statement filed under § 15-601, § 15-603, § 15-604, or § 15-605 of this subtitle shall:

- (1) be filed with the Ethics Commission;
- (2) be filed under oath;
- (3) be filed on or before April 30 of each year;
- (4) cover the calendar year immediately preceding the year of filing; and
- (5) contain the information required in § 15-607 of this subtitle.

(The rest of Sec. 15-602 is not relevant and is not part of this plan.)

**§ 15-607. Content of statements**

(a) In general. -- A statement that is required by § 15-601 (a) of this subtitle shall contain schedules disclosing the information and interests specified in this section, if known, for the individual making the statement for the applicable period under this subtitle.

(b) Interests in real property. --

(1) The statement shall include a schedule of each interest in real property, wherever located, including each interest held in the name of a partnership, limited liability partnership, or limited liability company in which the individual held an interest.

(2) For each interest reported the schedule shall include:

- (i) the nature of the property;*
- (ii) the street address, mailing address, or legal description of the property;*
- (iii) the nature and extent of the interest in the property, including any conditions to and encumbrances on the interest;*
- (iv) the date and manner in which the interest was acquired;*
- (v) the identity of the entity from which the interest was acquired;*
- (vi) if the interest was acquired by purchase, the nature and amount of the consideration given for the interest;*
- (vii) if the interest was acquired in any other manner, the fair market value of the interest when acquired;*
- (viii) if any interest was transferred, in whole or in part, during the applicable period:
  - 1. a description of the interest transferred;*
  - 2. the nature and amount of the consideration received for the interest; and*
  - 3. the identity of the entity to which the interest was transferred; and**
- (ix) the identity of any other entity with an interest in the property.*

*(c) Interests in corporations and partnerships. --*

*(1) The statement shall include a schedule of each interest held by the individual in a corporation, partnership, limited liability partnership, or limited liability company, whether or not the corporation, partnership, limited liability partnership, or limited liability company does business with the State.*

*(2) For each interest reported, the schedule shall include:*

- (i) the name and address of the principal office of the corporation, partnership, limited liability partnership, or limited liability company;*
- (ii) subject to paragraph (3) of this subsection, the nature and amount of the interest held, including any conditions to and encumbrances on the interest;*
- (iii) except as provided in paragraph (4) of this subsection, if any interest was acquired during the applicable period:
  - 1. the date and manner in which the interest was acquired;*
  - 2. the identity of the entity from which the interest was acquired;*
  - 3. if the interest was acquired by purchase, the nature and amount of the consideration given for the interest; and**

*4. if the interest was acquired in any other manner, the fair market value of the interest when it was acquired; and*

*(iv) if any interest was transferred, in whole or in part, during the applicable period:*

*1. a description of the interest transferred;*

*2. the nature and amount of the consideration received for the interest; and*

*3. if known, the identity of the entity to which the interest was transferred.*

*(3) (i) As to an equity interest in a corporation, the individual may satisfy paragraph (2)(ii) of this subsection by reporting, instead of a dollar amount:*

*1. the number of shares held; and*

*2. unless the corporation's stock is publicly traded, the percentage of equity interest held.*

*(ii) As to an equity interest in a partnership, limited liability partnership, or limited liability company, the individual may satisfy paragraph (2)(ii) of this subsection by reporting, instead of a dollar amount, the percentage of equity interest held.*

*(4) If an interest acquired during the applicable reporting period consists of additions to existing publicly traded corporate interests acquired by dividend or dividend reinvestment, and the total value of the acquisition is less than \$ 500, only the manner of acquisition is required to be disclosed under paragraph (2)(iii) of this subsection.*

*(d) Interest in business entity doing business with State. --*

*(1) The statement shall include a schedule of each interest in a business entity doing business with the State, other than interests reported under subsection (c) of this section.*

*(2) For each interest reported, the schedule shall include:*

*(i) the name and address of the principal office of the business entity;*

*(ii) the nature and amount of the interest held, including any conditions to and encumbrances on the interest;*

*(iii) if any interest was acquired during the applicable period:*

*1. the date and manner in which the interest was acquired;*

*2. the identity of the entity from which the interest was acquired;*

*3. if the interest was acquired by purchase, the nature and amount of the consideration given for the interest; and*

*4. if the interest was acquired in any other manner, the fair market value of the interest when it was acquired; and*

*(iv) if any interest was transferred, in whole or in part, during the applicable period:*

- 1. a description of the interest transferred;*
- 2. the nature and amount of the consideration received for the interest; and*
- 3. the identity of the entity to which the interest was transferred.*

*(e) Gifts. --*

*(1) This subsection does not apply to a gift received from a member of the immediate family, another child, or a parent of the individual.*

*(2) The statement shall include a schedule of each gift, specified in paragraph (3) of this subsection, received during the applicable period:*

*(i) by the individual or by another entity at the direction of the individual; and*

*(ii) directly or indirectly, from or on behalf of an entity that is:*

- 1. a regulated lobbyist;*
- 2. regulated by the State; or*
- 3. otherwise an entity doing business with the State.*

*(3) (i) Except as provided in subparagraph (ii) of this paragraph, the schedule shall include each gift with a value of more than \$ 20 and each of two or more gifts with a cumulative value of \$ 100 or more received from one entity during the applicable period.*

*(ii) The statement need not include as a gift:*

- 1. food or beverages received and consumed by an official of the Legislative Branch in the presence of the donor or sponsoring entity as part of a meal or reception, to which were invited all members of a legislative unit;*
- 2. food or beverages received by a member of the General Assembly at the time and geographic location of a meeting of a legislative organization for which the member's presiding officer has approved the member's attendance at State expense; or*
- 3. a ticket or free admission extended to a member of the General Assembly by the person sponsoring or conducting the event as a courtesy or ceremony to the office to attend a charitable, cultural, or political event to which were invited all members of a legislative unit.*

*(iii) Notwithstanding the provisions of subparagraph (ii) of this paragraph, the statement shall include the acceptance of each of two or more tickets or free admissions, extended to a member of the General Assembly by the person sponsoring or conducting the event, with a cumulative value of \$ 100 or more received from one entity during the applicable period.*

*(4) For each gift subject to this subsection, the schedule shall include:*

*(i) the nature and value of the gift; and*

*(ii) the identity of the entity from which, directly or indirectly, the gift was received.*

*(5) This subsection does not authorize any gift not otherwise allowed by law.*

*(f) Employment by or interest in business entity doing business with State. --*

*(1) The statement shall include, as specified in this subsection, a schedule of all offices, directorships, and salaried employment, or any similar interest not otherwise disclosed, in business entities doing business with the State.*

*(2) This subsection applies to positions and interests held at any time during the applicable period by:*

*(i) the individual; or*

*(ii) any member of the individual's immediate family.*

*(3) For each position or interest reported, this schedule shall include:*

*(i) the name and address of the principal office of the business entity;*

*(ii) the nature of the position or interest and the date it commenced;*

*(iii) the name of each governmental unit with which the entity is doing business; and*

*(iv) the nature of the business with the State, which, at a minimum, shall be specified by reference to the applicable criteria of doing business described in § 15-102(j) of this title.*

*(g) Indebtedness to entity doing business with State. --*

*(1) The statement shall include a schedule, to the extent the individual may reasonably be expected to know, of each debt, excluding retail credit accounts, owed at any time during the applicable period to entities doing business with the State:*

*(i) by the individual; and*

*(ii) if the individual was involved in the transaction giving rise to the debt, by any member of the immediate family of the individual.*

*(2) For each debt, the schedule shall include:*

*(i) the identity of the entity to which the debt was owed;*

*(ii) the date it was incurred;*

*(iii) the amount owed at the end of the applicable period;*



(iv) *the terms of payment;*

(v) *the extent to which the principal was increased or decreased during the applicable period; and*

(vi) *any security given.*

(h) *Family members employed by State. -- The statement shall include a schedule listing the members of the immediate family of the individual who were employed by the State in any capacity at any time during the applicable period.*

(i) *Sources of earned income. --*

(1) *Except as provided in paragraph (2) of this subsection, the statement shall include a schedule listing the name and address of each:*

(i) *place of salaried employment, including secondary employment, of the individual or a member of the individual's immediate family at any time during the applicable period; and*

(ii) *business entity of which the individual or a member of the individual's immediate family was a sole or partial owner, and from which the individual or family member received earned income, at any time during the applicable period.*

(2) *The statement may not include a listing of a minor child's employment or business entities of which the child is sole or partial owner, unless the place of employment or the business entity:*

(i) *is subject to the regulation or authority of the agency that employs the individual; or*

(ii) *has contracts in excess of \$ 10,000 with the agency that employs the individual.*

(j) *Additional information. -- The statement may include a schedule listing additional interests or information that the individual chooses to disclose.*

(The rest of Sec. 15-607 is not part of this plan.)

**§ 15-608. *Interests attributable to individual filing statement***

(a) *In general. -- The following are deemed to be interests of the individual under § 15-607(b), (c), and (d) of this subtitle:*

(1) *an interest held by a spouse or child of the individual, if the interest was directly or indirectly controlled by the individual at any time during the applicable period;*

(2) *an interest held by a business entity in which the individual held a 30% or greater interest at any time during the applicable period; and*

(3) *an interest held by a trust or an estate in which, at any time during the applicable period, the individual:*

(i) *held a reversionary interest;*

(ii) *was a beneficiary; or*

(iii) if a revocable trust, was a settlor.

(b) Effect on other disclosure requirements. -- Subsection (a) (2) of this section does not affect:

(1) the requirement under § 15-607 (b) of this subtitle of disclosure of real estate interests held in the name of a partnership, limited liability partnership, or limited liability company in which the individual holds an interest; and

(2) the requirement under § 15-607 (c) of this subtitle of disclosure of all partnerships, limited liability partnerships, or limited liability companies in which the individual holds an interest.

(c) Blind trusts. -- For the purposes of § 15-607 of this subtitle and the disclosure required by that section, interests held by a blind trust may not be considered to be interests of the person making the statement if the blind trust is approved by the Ethics Commission in accordance with regulations adopted pursuant to § 15-501 (b) or § 15-502 (c) of this title and is operated in compliance with those regulations.

**(E) (iii) Reliance on local units of government:** Requires that the SIP provide, “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>10</sup>

- 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 systems:** Requires the SIP to “provide citations to the state’s regulations for source monitoring, recordkeeping, and reporting requirements applicable to [NO<sub>2</sub>]...” and to “identify state requirements providing for periodic reporting of emissions inventory data by the state to [EPA]...”<sup>11</sup>

**(F)(i): Stationary Source Monitoring Equipment:** Requires that the SIP require, “as may be prescribed by [EPA]... the installation, maintenance, and replacement of equipment, and

<sup>10</sup> See 42 U.S.Code 7410(a)(2)(E)(iii)

<sup>11</sup> See “Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under Sections 110(a)(1) and 110(a)(2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards,” October 14, 2011, Attachment, page 13.

the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources.”<sup>12</sup>

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(b)(1) Environment Article, Annotated Code of Maryland.
- §2-301(a)(1) 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:

- COMAR 26.11.01.04B, “Testing and Monitoring,” which addresses requirements for monitoring.
- COMAR 26.11.01.10, “Continuous Emission Monitoring (CEM) Requirements”
- COMAR 26.11.09.08, “Control of NO<sub>x</sub> Emissions for Major Stationary Sources”
- COMAR 26.11.03.01, “Applicability and General Requirements,” in the chapter “Permits, Approvals, and Registration — Title V.” This addresses compliance monitoring. Note that this regulation is not included in Maryland’s SIP-approved regulations under 40 CFR 52.1070(c) but is included here for reference purposes.

**(F)(ii): Stationary Source Monitoring Reports:** Requires that the SIP require, “as may be prescribed by [EPA]... periodic reports on the nature and amounts of emissions and emissions-related data from such sources”<sup>13</sup>

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”

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<sup>12</sup> See 42 U.S.Code 7410(a)(2)(F).

<sup>13</sup> See 42 U.S.Code 7410(a)(2)(F).

- 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:** Requires that the SIP require, “as may be prescribed by [EPA]... correlation of such reports [periodic reports on the nature and amounts of emissions and emissions-related data, from the previously referenced stationary sources] by the State agency with any emission limitations or standards established pursuant to [the CAA], which reports shall be available at reasonable times for public inspection.”<sup>14</sup>

The following Maryland provisions address these requirements to make reports with emission limitations or standards available to the public:

- §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.
- 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 26.11.01.04B(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.”

### **Clean Air Act § 110(a)(2)(G)**

*§ 110(a)(2)(G), Emergency powers: Requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in the SIP.*

- Air pollution emergency: Environment Article, §2-105, Annotated Code of Maryland. Please see below.

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<sup>14</sup> See 42 U.S.Code 7410(a)(2)(F).

§2-105.

(a) (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) *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.*

- Authority to adopt regulations that establish standards and procedures to be followed whenever pollution of the air reaches an emergency condition: §2-301 (a) (2) of the Environment Article, Annotated Code of Maryland.
- Air Pollution Episode System COMAR 26.11.05, in the Maryland SIP under 40 CFR 52.1070(c).
- 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: Environment Article, §2-604 (Administrative corrective order authority) and § 2-609 (a) (Civil injunctive authority), Annotated Code of Maryland.

### **Clean Air Act § 110(a)(2)(H)**

***§ 110(a)(2)(H), Future SIP revisions:*** *Requires states to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is substantially inadequate.*

- 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. Also, on February 11, 2013, 78 Fed. Reg. 9593 and 78 Fed. Reg. 9650, EPA issued a direct final rule and proposed rule, respectively, approving Maryland SIP revisions to COMAR 26.11.04. As noted in the footnotes, above, under the Clean Air Act § 110(a)(2)(A) section of this SIP, the direct final rule will be effective on April 12, 2013, without further notice. Note that in these changes to Maryland's regulations, the NAAQS are being incorporated by reference prospectively in order for Maryland's ambient air quality standards to be identical to the federal standards at all times.

### **Clean Air Act § 110(a)(2)(J)**

***§ 110(a)(2)(J), Consultation, public notification, PSD and visibility:***  
**(J) Consultation** requires states to provide a process for consultation with local governments and Federal Land Managers carrying out NAAQS implementation requirements pursuant to § 121<sup>15</sup> consultation requirements

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)

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<sup>15</sup> § 121. In carrying out requirements for plans to contain - (1) any transportation controls, air quality maintenance plan requirements or preconstruction review of direct sources of pollution, or (2) any measure referred to - (A) in part D), or (B) in part C, and in carrying out the requirements of § 113(d), the State shall provide a satisfactory process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any FLM having authority over Federal land to which the State plan applies. Such process shall be in accordance with regulations promulgated by EPA. Only a general purpose unit of local government, regional agency, or council of governments adversely affected by action of EPA approving any portion of a plan may petition for judicial review.

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

**(J) Public notification** requires states to notify the public if NAAQS are exceeded in an area, to advise the public of health hazards and to enhance public awareness of measures to prevent exceedances and ways that they can participate in regulatory and other efforts to improve air quality. (§ 127<sup>16</sup> public notification)

- 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:
  - In 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.”

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<sup>16</sup> § 127. (a) Each plan shall contain measures to regularly notify the public of when any NAAQS is exceeded or was exceeded during the preceding year, to advise the public of health hazards associated with such pollution, and to enhance awareness of measures which can be taken to prevent the standards from being exceeded and ways in which the public can participate in regulatory and other efforts to improve air quality.

- 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.

**(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.

- Maryland has revised its regulations at COMAR 26.11.06.14 and COMAR 26.11.01.01B(37). This revision changes Maryland’s “PSD sources” regulations to refer to any new or modified source subject to the provisions of 40 CFR 52.21, as amended. This regulation revision will take effect in late June 2013, at which time it will be submitted to EPA for SIP approval.



- 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.

## Clean Air Act § 110(a)(2)(K)

*§ 110(a)(2)(K), Air quality modeling/data: Requires that SIPs provide for performing air quality modeling for predicting effects on ambient air quality of emissions from any NAAQS pollutant and submission of such data (relating to the modeling) to EPA upon request.*

### 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). This regulation revision will take effect in late June 2013, at which time it will be submitted to EPA for SIP approval.
- 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 26.11. COMAR 20.79.03.02 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 PM<sub>2.5</sub> SIPs.

## **Clean Air Act § 110(a)(2)(L)**

**§ 110(a)(2)(L), Permitting fees:** *SIPs must require each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing, and enforcing a permit.*

*“(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 [Permits] of [the Clean Air Act];”<sup>17</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. Note that COMAR 26.11.03 is not part of Maryland’s EPA-approved SIP and is mentioned here for reference purposes only.

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

## **Clean Air Act § 110(a)(2)(M)**

**§110(a)(2)(M), Consultation/participation by local entities:** *Requires SIPs to “provide for consultation and participation by local political subdivisions affected by the plan.”<sup>18</sup>*

<sup>17</sup> See 42 USC 7410(a)(2)(L)

<sup>18</sup> See 42 USC 7410(a)(2)(M)

- Statutory authority 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:
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  - 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:
  - In 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.
  - 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,”
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  - 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.



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

FEB 21 2013

The Honorable Robert M. Summers, Ph.D., Secretary  
Maryland Department of the Environment  
1800 Washington Boulevard  
Baltimore, Maryland 21230

Dear Secretary ~~Summers~~ <sup>Bob</sup>:

By letter and enclosures dated July 12, 2012, 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 12, 2012 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
- b) Particulate Matter Speciation Trends Network
- c) The National Core Monitoring Network

EPA determined that MDE's July 12, 2012 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 Mrs. Linda Miller, EPA's Maryland Liaison, at (215) 814-2068. For questions regarding this approval action, your staff may contact Ms. Diana Esher, Director, Air Protection Division, at (215) 814-2706.

Sincerely,

A handwritten signature in cursive script, appearing to read "Shawn M. Garvin".

Shawn M. Garvin  
Regional Administrator

cc: Mr. George Aburn, MDE