

MARYLAND REGISTER

## Proposed Action on Regulations

<b>Transmittal Sheet</b>  <b>PROPOSED OR REPROPOSED</b>  <b>Actions on Regulations</b>	<b>Date Filed with AELR Committee</b>	<b>TO BE COMPLETED BY DSD</b>
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3. Name of Promulgating Authority

Department of the Environment

4. Name of Regulations Coordinator

Heather W Barthel

Telephone Number

410-537-3145

Mailing Address

1800 Washington Blvd.

**City State Zip Code**

Baltimore MD 21230

Email

heather.barthel@maryland.gov

5. Name of Person to Call About this Document

Ed Stone

Telephone No.

410-537-3661

Email Address

ed.stone@maryland.gov

6. Check applicable items:

New Regulations

Amendments to Existing Regulations



**Title 26**  
**DEPARTMENT OF THE ENVIRONMENT**

**Subtitle 04 REGULATION OF WATER SUPPLY, SEWAGE DISPOSAL, AND  
SOLID WASTE**

**26.04.02 Sewage Disposal and Certain Water Systems for Homes and Other  
Establishments in the Counties of Maryland Where a Public Sewage Systems is Not  
Available**

Authority: Environment Article, §§9-216, 9-217, 9-223, 9-252, 9-319, 9-510, 9-1108, 10-103, 10-301, and 10-304, Annotated Code of Maryland

**Notice of Proposed Action**

□

The Secretary of the Environment proposes to Amend Regulation .07 Best Available Technology for Removal of Nitrogen (BAT).

**Statement of Purpose**

The purpose of this action is to remove the universal requirement that Best Available Technology for Removal of Nitrogen (BAT) systems be installed outside the Critical Area for all new construction or replacement septic systems, unless the local governing body enacts code in order to protect public health or waters of the State, or the system design is 5,000 gallons per day or greater.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.**

Currently on-site disposal systems (OSDS) serving new construction in the Chesapeake Bay watershed, in the Atlantic Coastal Bays watershed, and in the watershed of any nitrogen impaired water body must include nitrogen-removal technology, including requirements for operation and maintenance of the nitrogen-removal technology for the life of the system. To be certified as a nitrogen-removal technology in Maryland, 5 years of operation and maintenance must also be included in the up-front cost system. This proposed action will reduce the requirement for nitrogen-removal technology so that most new or replacement OSDS installed outside of both the Chesapeake Bay critical area and the Coastal Bays critical area, will no longer be required to include nitrogen-removal technology.

The proposed action will have economic impacts on State agencies, local approving authorities, small businesses, the regulated industry, and the regulated community.

Impacts to the issuing agency and the local approving authorities will be minimal. MDE currently administers the State OSDS program primarily through delegation agreements with local approving authorities. Local approving authorities inspect the installation of nitrogen reducing technologies; however, these approving authorities must continue to inspect the installation of all OSDS. Nutrient removal technology is an additional component usually installed in place of a traditional septic tank. The proposal will have a negative economic benefit for the business community and regulated industry and a positive economic impact on the regulated community.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(E-)	Minimal
B. On other State agencies:	(E-)	Minimal
C. On local governments:	(E-)	Minimal
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(-)	Moderate
E. On other industries or trade groups:	(-)	Minimal
F. Direct and indirect effects on public:	(+)	Significant

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

A. Under existing regulations, MDE's Water Management Administration's OSDS responsibilities include maintaining a system to ensure that nitrogen-removal systems are maintained for the life of the system. This proposal would reduce the number of systems that MDE is responsible to account for.

B. To the extent that State agencies may have facilities that will no longer be impacted by the prior requirements, see F below.

C. Local approving authorities issue permits for and inspect the installation of OSDS. Reducing the requirement for including nitrogen-removal technologies decreases the complexity of these activities. While approving authorities must continue to inspect all OSDS installations, some inspections will no longer have to include the nitrogen removal technology. To the extent that local agencies may have facilities impacted by the requirement, see Note F below.

D. The regulated industry includes vendors who sell nitrogen removal technologies, installers of nitrogen-removal technology, and service providers who operate and maintain nitrogen-removal technologies. The Department estimates that on average 703 fewer BAT systems will be installed outside of the Critical Area as a result of this proposal. On average the cost difference between a conventional systems and a BAT

system is \$7,500. The estimated annual economic impact will be \$5,272,500. The economic loss from such a reduction in sales, installation, and maintenance of new systems would be an economic gain for the homeowner who opts for the less expensive conventional system.

E. Installation of nitrogen-removal technology requires providing electricity and sometimes additional plumbing. Trades people and small businesses would have less activity from the reduction in the potential number of required systems under this proposal.

F. This proposal will result in a reduction of nitrogen removal systems installed per year. The cost and electric use per system varies depending on a number of factors, however, average installation of nitrogen-removal technology costs approximately \$12,000, with electrical use estimated at \$112 per year, and operation and maintenance after the first 5 years costs \$150 to \$300 per year. These benefits will accrue to property owners.

### **Economic Impact on Small Businesses**

The proposed action has a meaningful economic impact on small business. An analysis of this economic impact follows.

From CY 2013 to date, on average, approximately 703 were installed outside the Critical Area. Using that number, this change in regulation may result in \$5,272,500 per year reduction sales. There are some homeowners who may voluntarily choose to install a BAT system, although it will no longer be a requirement.

### **Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

### **Opportunity for Public Comment**

Comments may be sent to Ed Stone, Program Manager, WMA, Maryland Department of the Environment, 1800 Washington Blvd., or call 410-537-3661, or email to [ed.stone@maryland.gov](mailto:ed.stone@maryland.gov), or fax to 410-537-3163. Comments will be accepted through . A public hearing has not been scheduled.

### **Economic Impact Statement Part C**

A. Fiscal Year in which regulations will become effective: FY 2017

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used: General Funds and two Special Funds: Bay Restoration Fund & Maryland Clean Water Fund.

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

G. Small Business Worksheet:

1a. Intended Beneficiaries. Who are the intended beneficiaries of the proposed regulation? Are these intended beneficiaries primarily households or businesses?

The primary beneficiaries are households.

1b. Intended Beneficiaries: Households. If households are the primary intended beneficiaries, will the proposal affect their income or purchasing power such that the volume or patterns of their consumer spending will change? If so, what directions of change would you anticipate? Will these expected spending changes have a disproportionate impact on small businesses? Can you descriptively identify the industries or types of business activities that are impacted?

Most new homes constructed outside the Chesapeake Bay and Coastal Bays critical area will no longer have to include best available technology (BAT) for removing nitrogen when served by an on-site sewage disposal system. This will reduce the cost of new construction in these areas.

1c. Intended Beneficiaries: Businesses. If businesses are the intended beneficiaries, identify the businesses by industry or by types of business activities.

N/A

How will businesses be impacted?

N/A

Are these Maryland establishments' disproportionately small businesses?

N/A

If so, how will these Maryland small businesses be affected?

Can you identify or estimate the present number of small businesses affected?

N/A

N/A

2a. Other Direct or Indirect Impacts: Adverse. Businesses may not be the intended beneficiaries of the proposal. Instead, the proposal may direct or otherwise cause businesses to incur additional expenses of doing business in Maryland. Does this

proposal require Maryland businesses to respond in such a fashion that they will incur additional work-time costs or monetary costs in order to comply?

No

Describe how Maryland establishments may be adversely affected.

Manufacturers, installers, design consultants and service providers of BAT may realize a loss of business as a result in the decrease of BAT systems installed. They will still be able to sell conventional systems and BAT systems in the Critical Area. It is likely that less homeowners will voluntarily install the more expensive BAT system.

Will Maryland small businesses bear a disproportionate financial burden or suffer consequences that affect their ability to compete?

No

Can you estimate the possible number of Maryland small businesses adversely affected? (Note that small business compliance costs in the area of regulation are the sum of out-of-pocket (cash) costs plus time costs — usually expressed as payroll, akin to calculations for legislative fiscal notes. Precise compliance costs may be difficult to estimate, but the general nature of procedures that businesses must accomplish to comply can be described.)

Presently, there are 15 manufacturers, approximately 1,350 certified BAT installers and 200 certified BAT Operation and Maintenance providers in the State.

2b. Other Direct or Indirect Impacts: Positive. Maryland businesses may positively benefit by means other than or in addition to changed consumer spending patterns. How may Maryland businesses be positively impacted by this initiative?

N/A

Will Maryland small businesses share proportionately or disproportionately in these gains?

N/A

Can you estimate the possible number of Maryland small businesses positively affected?

N/A

3. Long-Term Impacts. There are instances where the longer run economic impact effects from regulations differ significantly from immediate impact. For example, regulations may impose immediate burdens on Maryland small businesses to comply, but the overall restructuring of the industry as a consequence of monitoring and compliance may provide offsetting benefits to the affected small businesses in subsequent years. Can you identify any long run economic impact effects on Maryland small businesses that over time (a) may compound or further aggravate the initial economic impact described above, or (b) may mitigate or offset the initial economic impact described above?

No

4. Estimates of Economic Impact. State Government Article, §2-1505.2 requires that an agency include estimates, as appropriate, directly relating to: (1) cost of providing goods and services; (2) effect on the work force; (3) effect on the cost of housing; (4) efficiency in production and marketing; (5) capital investment, taxation, competition, and economic development; and (6) consumer choice.

Most new homes constructed outside the Chesapeake Bay and Coastal Bays critical area will no longer have to include best available technology (BAT) for removing nitrogen when served by an on-site sewage disposal system. This will reduce the cost of new construction in these areas. There will be a moderate decrease in the cost of housing.

Attached Document:

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DOWNLOAD DATE 05-24-2016

## **Title 26 DEPARTMENT OF THE ENVIRONMENT**

### **Subtitle 04 REGULATION OF WATER SUPPLY, SEWAGE DISPOSAL, AND SOLID WASTE**

#### **Chapter 02 Sewage Disposal and Certain Water Systems for Homes and Other Establishments in the Counties of Maryland Where a Public Sewage System is Not Available**

Authority: Environment Article, §§9-216, 9-217, 9-223, 9-252, 9-319, 9-510, 9-1108, 10-103, 10-301, and 10-304, Annotated Code of Maryland

#### **.07 Best Available Technology for Removal of Nitrogen (BAT)**

A. A person may not install, or have installed, an onsite sewage disposal system unless the onsite sewage disposal system utilizes BAT for any of the following:

(1) New construction in either the Chesapeake Bay [Watershed] or the Atlantic Coastal Bays [watershed] *Critical Area*;

[(2) New construction in any watershed of a nitrogen impaired body of water; or]

[(3)] (2) A replacement system to serve a property in either the Chesapeake Bay [critical area or] *and* the Atlantic Coastal Bays [critical area] *Critical Area*.

*B. A person may not install, or have installed, for new construction an onsite sewage disposal system where the design flow is 5000 gallons per day or greater unless the sewage disposal system utilizes BAT or equivalent technology.*

[B.] C. New construction *does not* include[s] the renovation or repair of [a] *an existing* residence [or other building and the Approving Authority determines that the existing on-site sewage disposal system is not adequate to serve the proposed alteration or altered building].

*D. A local jurisdiction may enact code to require a BAT system outside the Critical Area in order to protect public health or the waters of the State.*

[C.] E. The property owner shall maintain and operate all new and existing BAT systems for the life of the system through one of the following management measures:

(1) The BAT system is operated *and maintained* by a responsible management entity [, acceptable to MDE] *approved by the Department, and* established by the Approving Authority or local government, to assume operation and maintenance of BAT systems;

(2) The BAT system is covered by a renewable operating permit, which is issued by or required by the Approving Authority and which includes enforcement provisions, inspections, and monitoring; or

(3) The [BAT is covered by a service contract that the property owner maintains with a certified service provider. If a] BAT system is operated and maintained by a certified service provider. The owner shall ensure the BAT system is inspected and has necessary operation and maintenance performed at a minimum of once per year.

*F. All BAT systems sold in the State shall include both a two-year operation and maintenance contract and a two-year warranty, which shall be in effect at the point of initial installation.*

[D.] *G. Certified Service Providers.*

(1) The Department shall maintain a list of certified service providers.

(2) An individual may become certified if he completes and passes a course of study on operation and maintenance of BAT systems approved by the Department. The course of study shall include instruction on how BAT systems function as well as elements on operation, maintenance, and repair of BAT systems.

(3) The [Maryland] Department [of the Environment] may revoke a certification of service provider for BAT systems for violation of these regulations.

(4) A certified service provider shall report on inspection, operation and maintenance activities to the Department, or the Department's designee, in a manner acceptable to the Department on a yearly basis prior to the yearly anniversary of the date of installation.

(5) The certified service provider shall have a certificate of qualification from the manufacturer, *vendor or the local representative* of the BAT system being serviced.

(6) A property owner may obtain certification as a service provider to maintain his system personally, subject to all the requirements of this regulation pertaining to operating and maintaining BAT systems.

[E.] *H. A person who has completed a course of study approved by the Department for the installation of BAT, and has a certification of qualification for installing BAT systems from the manufacturer, is required to be present on the property while a BAT unit is installed.*

[F.] *I. Within 1 month of the completion of an installation, a person installing a BAT system shall report to the Department, or the Department's designee, in a manner acceptable to the Department, the address and date of completion of the BAT installation and the type of BAT installed.*

[G.] *J. The owner of an onsite sewage disposal system with a design flow less than 1500 gpd, requiring a BAT system under §A or [B]D of this regulation, may only install:*

(1) A BAT system that has been approved by the [Maryland] Department [of the Environment]; or

(2) An individually engineered nonproprietary BAT system if a governmental agency or their designee is the responsible management entity or issues renewable operating permits.

[H.] *K. The owner of an onsite sewage disposal system with a design flow greater than 1,500 gpd, requiring a BAT system under §A, [or]B or D of this regulation may only install a BAT system that is individually engineered for the site and approved by the Department or the Department's designee.*

[I.] *L. A permittee shall construct a BAT unit in a manner and of materials acceptable to the Department and the Approving Authority.*

[J.] *M. If the applicant demonstrates that extremely low, variable or sporadic wastewater flow results in malfunctioning of the BAT system, the Department may grant a variance to the BAT requirement upon a request from the Approving Authority.*