

DEPARTMENT OF THE ENVIRONMENT
AIR AND RADIATION ADMINISTRATION

Response to Comments

On the Proposed Amendments to
Regulations .01 and .10 under COMAR 26.11.08 – Control of Incinerators
Public Hearing Held in Baltimore, MD
October 29, 2019

Purpose of Hearing: The purpose of the public hearing was to allow for public comment on the Maryland Department of the Environment's (the Department or MDE) proposal regarding amendments to Regulations .01 and .10 under COMAR 26.11.08 – Control of Incinerators.

The proposed action amends nitrogen oxide (NOx) reasonable available control technology (RACT) requirements under COMAR 26.11.08.01 and COMAR 26.11.08.10 for large municipal waste combustors (Large MWCs). In order to satisfy the Environmental Protection Agency's (EPA) updated startup, shutdown and malfunction (SSM) policy (80 Fed. Reg. 33840), this action extends NOx emission limits to cover periods when a Large MWC is combusting only fossil fuels, as a means to warm-up the furnace and other critical components prior to municipal solid waste being fed to the combustor. This action includes additional amendments to clarify how the 24-hour block average emission rates and 30-day rolling average emission rates are to be calculated.

This proposed action concerning Large MWCs is required by the EPA before the EPA can approve the Large MWC regulations that the Department adopted on December 6, 2018, for inclusion in Maryland's State Implementation Plan (SIP). On December 6, 2018, MDE adopted updates to NOx RACT for Large MWCs with a capacity greater than 250 tons per day. That action established new NOx RACT standards and requirements for Large MWCs at all times when burning municipal waste. This proposed action does not change the emission standards for Large MWCs when they are burning municipal waste.

Date and Location: The public hearing was held on October 29, 2019, at 1 p.m. at the Department of the Environment, 1800 Washington Boulevard, 1st Floor Terra Conference Room, Baltimore, Maryland 21230.

Attendance: 6 attendees: Randy Mosier, Carolyn Jones, and Molla Sarros of MDE and the attendees listed in Attachment A – MWC Warm-up NOx RACT Hearing Sign-In Sheet.

Statement: The Department's statement was read by Mr. Husain Waheed, Senior Regulatory and Compliance Engineer of the Regulations Development Division of the Air and Radiation Administration, Department of the Environment.

Comments and Responses: Comments were received from the American Lung Association, Energy Justice Network and Institute for Local Self-Reliance/United Workers of Baltimore.

A summary of the comments received and the Department's responses to the comments are below.

1. COMMENT:

A commenter supports the State's proposal to update the startup, shut down, and maintenance requirements for Maryland's Large MWCs. While the commenter does not support the burning of waste debris, these facilities currently exist and need better control measures in place. Maryland

needs to take all possible steps to reduce the impact their emissions have, especially on the neighboring communities.

The commenter supports limiting the time allowed for warm-up periods during start-up and shut-down processes. However, the commenter recommends requiring NO_x Maximum Achievable Control Technology (MACT) standards to be met during those periods, rather than the proposed Reasonably Achievable Control Technology (RACT) standards. The commenter also supports stronger efforts to monitor compliance through improved quarterly reporting and flagging exceedances.

RESPONSE:

MDE ARA appreciates the comments and agrees that existing Large MWCs in Maryland need to operate their pollution control measures in an optimal manner to ensure that emissions of pollution are minimized to the greatest extent possible. Additional compliance measures and reporting requirements further ensure that the facilities are operating as prescribed.

The purpose of these amendments and the regulations adopted on December 6, 2018, is to establish new NO_x RACT emissions rates that apply during all operating conditions. Under Section 182 of the CAA, 42 U.S.C. §7511a, sources in ozone nonattainment areas classified as moderate and above are subject to a NO_x RACT requirement. Because the EPA designated the Baltimore area as moderate nonattainment under the 2008 ozone national ambient air quality standards (NAAQS), the CAA requires MDE to review and revise NO_x RACT requirements in the Maryland State Implementation Plan (SIP) as necessary to achieve compliance with the NAAQS. EPA defines RACT as “the lowest emissions limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility” (44 FR 53761 and 53762, September 17, 1979). In reviewing existing NO_x RACT requirements for adequacy, the Department considers technological advances, the stringency of the revised ozone standard and whether new sources subject to RACT requirements are present in the nonattainment area. The Department must examine existing controls on major sources of NO_x to determine whether additional controls are economical and technically feasible, and include any such controls in Maryland's RACT SIP, where appropriate, to be approved by EPA.

While the regulations adopted on December 6, 2018 established RACT emissions limits, they additionally required the Wheelabrator facility to submit to the Department a feasibility analysis regarding additional control of NO_x emissions at the facility. This feasibility analysis is required by no later than January 1, 2020. Specifically, the adopted regulation under COMAR 26.11.08.10E(1)(b) requires: *“A written narrative and schematics detailing various state-of-the art NO_x control technologies for achieving additional NO_x emission reductions from existing MWCs, including technologies capable of achieving NO_x emission levels comparable to those for a new source in consideration of the overall facility design at Wheelabrator Baltimore Inc.”* The Department intends to use that feasibility analysis to determine whether additional regulation of the Wheelabrator facility is appropriate.

2. COMMENT:

A commenter observed that this hearing was lacking in attendance. They stated that every parent with a child with asthma should have been notified about the hearing and they were concerned that the hearing was held at 1 pm on a workday and further stated that there is a lack of outreach. MDE should do more outreach, including for environmental justice. MDE should hold another hearing, particularly in the evening.

RESPONSE:

MDE ARA followed all state and federal procedures for the development of the regulations that MDE adopted on December 6, 2018, and their associated public hearing. The Department has met with stakeholders, including the affected facilities, environmental community, the U.S. Environmental Protection Agency, Baltimore City Council and the general public, on multiple occasions since the summer of 2015. The Department held an extensive stakeholder process over this period of time and has received significant comments throughout this process. Scores of the stakeholders turned out for MDE's September 21, 2018, public hearing concerning these earlier amendments for the incinerators.

As with the associated regulation adopted on December 6, 2018, the Department followed all state and federal procedures for the development of the current regulation that is the subject of this comment. The Department provided its 30-day notice of this hearing to the public in the Maryland Register. MDE ARA posted the 30-day hearing notice on the MDE Web site. The Department emailed the hearing notice regarding these proposed amendments to our stakeholders, including environmental groups and community members. Separately, the Commission on Environmental Justice and Sustainable Communities (CEJSC), which MDE staffs, is working to develop an outreach plan for environmental justice communities.

3. COMMENT:

A commenter noted that they had trouble finding this rule in the Maryland Register and that to access the Maryland Register, after a certain time (back issues), one must pay. Other states don't do this; their rules are left online and searchable.

RESPONSE:

In addition to the past three months of issues available from the Maryland Division of State Documents at <http://www.dsd.state.md.us/MDR/mdregister.html>, the Maryland Register can be accessed from some libraries. This includes some Maryland university general and law libraries during visitor hours as well as some public libraries during regular library hours.

Examples of locations where the public can access older issues of the Maryland Register, in some cases dating as far back as 1974, are available on the MDE Web site, under "Other Related Links" at <https://mde.maryland.gov/programs/Regulations/Pages/index.aspx>.

4. COMMENT:

A commenter stated that in Maryland, local governments can have stricter air quality standards than the state and federal government. They noted that MDE has said that the municipal waste combustor amendments discussed at MDE's Air Quality Control Advisory Committee (AQCAC) in March 2018, were designed with the understanding that Baltimore City is interested in lower emissions from Wheelabrator and said that it is not preempting the city passing stricter legislation. The commenter asked for the regulation to be clear that it does not preempt local government from establishing stricter emission limits.

RESPONSE:

This comment is nonresponsive to the emissions limits which this action seeks to implement. As noted above, this proposed action sets emission limits for warm-up periods before a municipal waste combustor burns municipal waste and does not set new emission limits for when Large MWCs burn municipal waste. Maryland's NOx RACT regulations for Large MWCs were adopted on December 6, 2018. Please see the technical support document (TSD) at https://mde.maryland.gov/programs/Regulations/air/Documents/TSD_COMAR_26_11_08_Contr_of_Incinerators08142018.pdf, and the response to comments (RTC) document at

https://mde.maryland.gov/programs/Regulations/air/Documents/RTC_COMAR_26_11_08_10_10_292018.pdf.

As noted the current requirements that must be followed by Large MWCs pursuant to State regulation are published at the Maryland Division of State Documents, COMAR online for Title 26 at http://www.dsd.state.md.us/comar/subtitle_chapters/26_Chapters.aspx

5. COMMENT:

Multiple commenters stated that the emission limit for Wheelabrator for NO_x should be 45 parts per million (ppm) and they inquired as to when MDE knew of the stricter city law (resolution) concerning the 45 ppm limit. They stated that MDE should pull back the 145-150 ppm rule and make it as protective as it needs to be. It is not stringent enough, at 145-150 ppm. They noted that similar facilities in nearby communities, especially the Montgomery County Resource Recovery facility, have more stringent NO_x emissions limits than the Wheelabrator facility.

RESPONSE:

This comment is nonresponsive to the emissions limits for warm-up operations at Large MWCs which this action seeks to implement. The emissions limits to which the commenter refers are earlier regulations for Large MWCs that went into effect in Maryland on December 6, 2018. Please see the response to comments and technical support documents for the 2018 regulations here: the technical support document (TSD) at

https://mde.maryland.gov/programs/Regulations/air/Documents/TSD_COMAR_26_11_08_Contr ol_of_Incinerators08142018.pdf, and the response to comments (RTC) document at https://mde.maryland.gov/programs/Regulations/air/Documents/RTC_COMAR_26_11_08_10_10_292018.pdf.

6. COMMENT:

A commenter cited several studies from 2005-2018 indicating that Baltimore has bad air pollution, elevated asthma rates, and health disparities including elevated rates of hospitalizations due to asthma among black and African-American residents compared with white Baltimore City residents. They also noted that MDE, as a recipient of federal funds, must comply with Title VI of the Civil Rights Act. MDE should pull back this rule and make sure it is as protective as it should be and that Baltimore residents are not disproportionately harmed.

RESPONSE:

The Department refers the commenter to the Large MWC amendments that went into effect in Maryland on December 6, 2018. Please see the technical support document (TSD) at https://mde.maryland.gov/programs/Regulations/air/Documents/TSD_COMAR_26_11_08_Contr ol_of_Incinerators08142018.pdf, and the response to comments (RTC) document at https://mde.maryland.gov/programs/Regulations/air/Documents/RTC_COMAR_26_11_08_10_10_292018.pdf. The Department agrees that continuing to reduce air pollution in the State of Maryland, through this rule and many other governmental actions, will provide beneficial human health and environmental outcomes. The Department disagrees that this action, which adds emissions limits for warm-up operations at Large MWCs, contributes to any violation of Title VI of the Civil Rights Act, to the extent one is alleged. The Baltimore area, including Baltimore City, has made significant strides in reducing air pollution over the past 15 years. It is now in attainment of the NAAQS for fine particulate matter, carbon monoxide, nitrogen dioxide, lead, and sulfur dioxide, and it has seen large reductions in hazardous air pollutants such as hydrogen chloride and mercury from state and federal regulations. And the EPA has issued a determination that the Baltimore area has attained the 2008 ozone NAAQS (see 80 Fed. Reg. 30,941, June 1, 2015). Ground-level ozone continues to improve with

the Department's implementation of regulations such as the December 2018 Large MWC amendments and the December 2015 regulations to reduce NOx emissions from coal-fired electric generating units (see COMAR 26.11.38). The Department encourages stakeholders to continue their collaborative efforts with the Department as we proceed with reviewing data and potential future control technologies for Large MWCs and other sources.

The Commission on Environmental Justice and Sustainable Communities, to which MDE provides staff support, is developing an outreach plan centered on low-income communities and communities of color that may be experiencing disproportionate environmental impacts by virtue of their exposure to pollutants. Also, the EPA and the U.S. Department of Transportation (U.S. DOT) have settled an allegation of discrimination involving a decision by the Maryland Public Service Commission to issue an approval for an electric generating station in Brandywine in Prince George's County. As part of the agreement between the EPA and U.S. DOT, the Maryland Public Service Commission, the Maryland Department of Natural Resources, and MDE have committed to improving community engagement and public outreach associated with the review of applications for power plants larger than 70 megawatts (MW) and fired using fossil fuels.

7. COMMENT:

A commenter cited 2017 National Emissions Inventory data indicating that Wheelabrator accounts for 58% of NOx emissions, which they cited as being roughly equal to the NOx emissions from half the cars and trucks in Baltimore. Asthma has a huge economic impact from the pollution from this incinerator. The commenter noted that the public hearing statement indicated that the proposed amendments have no economic impact, which means that Wheelabrator is not doing enough. They cited a number of economic impacts from the elevated asthma rates in Baltimore City, such as a lot of people missing days of school and work.

RESPONSE:

The Department refers the commenter to the Large MWC amendments that went into effect in Maryland on December 6, 2018. Economic impact, emission reductions and requirements were detailed in the previously adopted action. Please see the technical support document (TSD) at https://mde.maryland.gov/programs/Regulations/air/Documents/TSD_COMAR_26_11_08_Contr ol_of_Incinerators08142018.pdf, and the response to comments (RTC) document at https://mde.maryland.gov/programs/Regulations/air/Documents/RTC_COMAR_26_11_08_10_10_292018.pdf.

The Department's regulation development process included a review of the proposed amendments by the Children's Environmental Health and Protection Advisory Council, which is chaired by the Maryland Department of Health, and an evaluation of impacts on the disabled communities. In addition, proposals of more significant regulations, such as the December 2018 Large MWC amendments, include an assessment of the costs and health and economic benefits of the regulations and the proposed emission reductions. The Department continues to implement regulations that improve air quality and, in doing so, reduce the health costs of air pollution.