



## AIR QUALITY CONTROL ADVISORY COUNCIL

### AGENDA

October 18, 2012  
8:15 a.m.

Montgomery Park  
Aqua Conference Room, 1<sup>st</sup> Floor  
1800 Washington Boulevard  
Baltimore, Maryland 21230

8:15 a.m.	Welcome and Introductions	John Quinn, Advisory Council Chair Tad Aburn, Air Director
8:20 a.m.	Approval of Meeting Minutes	John Quinn
<b><u>Action Items for Discussion/Approval:</u></b>		
8:30 a.m.	Standings Bill COMAR 26.11.02. 07, .11 and .12	Karen Irons
9:15 a.m.	Permit Fees COMAR 26.11.02.17 and 19	Karen Irons
10:00 a.m.	Confirm Next Meeting Dates	Members
10:05 a.m.	Adjourn	



## ***Facts About...***

### **Amendments to COMAR 26.11.02.17, Fee Schedules for Permits to Construct, and COMAR 26.11.02.19, Fee Schedules for State Permits to Operate, Title V Operating Permits**

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September 12, 2012

#### **Purpose of Amendments**

##### COMAR 26.11.02.17 - Fee Schedule: Permit to Construct

The purpose of the amendments to COMAR 26.11.02.17 is to clarify how fees are applied to Air Quality Permit to Construct source categories; to establish a new fee for an additional source category that requires an Air Quality Permit to Construct; and to raise the existing minimum fee for securing a standard Air Quality Permit to Construct from \$200 to \$500, for most sources. The proposed fee increases apply to sources requiring an individual Air Quality Permit to Construct. The fees will remain the same for small sources requiring an Air Quality General Permit to Construct.

##### COMAR 26.11.02.19 – Fee Schedule: Title V Permit or a State Permit to Operate

The purpose of the amendments to COMAR 26.11.02.19 is to raise the annual base fee for large air pollution sources in Maryland that are required to obtain a federal Title V Permit or State Permit to Operate. The proposed amendments raise the annual base fee from \$200 to \$5,000 for sources requiring a federal Title V Permit and from \$200 to \$500-\$1,000 for sources requiring a State Permit to Operate.

#### **Background**

##### COMAR 26.11.02.17 - Fee Schedule: Permit to Construct

COMAR 26.11.02.17 establishes fees for Air Quality Permit to Construct source categories. Under the current fee structure, fees range from \$200 for simple permits to \$20,200 for the most complex permits. This fee structure has not been adjusted for nearly 20 years despite increases in the number and complexity of applicable federal and state air pollution control and public review requirements for permit applications. The fee structure does not currently match the extensive level of effort required to process permit applications.

In addition, the current regulation is not clear on how fees should be applied to permit applications that require multiple permits or approvals. For example, in rare cases, very large construction projects can require both a Prevention of Significant Deterioration (PSD) approval and a New Source Review (NSR) approval. A single \$20,000 fee for these types of projects does not adequately reflect the amount of Department resources

required to review and process these applications. The amended regulation clarifies that a separate fee should be charged for each of those permits or approvals. The amended regulation also clarifies that a Plant-wide Applicability Limit (PAL) permit, a type of NSR approval, is also subject to the same \$20,000 fee.

In addition, an Air Quality Permit to Construct can be issued to a source that does not involve a new or modified emissions unit, but requires enforceable conditions set forth in a permit. For example, a source can apply for a permit that includes plant-wide limits to preclude applicability of major source regulations such as Title V operating permits, NSR, PSD, or major source MACT. These types of Air Quality Permit to Construct applications require extensive review but are not listed under the current fee structure. The amended regulation establishes a new fee of \$1500 for this type of permit.

#### COMAR 26.11.02.19 – Fee Schedule: Title V Permit or a State Permit to Operate

COMAR 26.11.02.19 establishes annual fees for sources that are required to obtain a federal Title V Permit or an Air Quality State Permit to Operate. The annual fee consists of a base fee plus an emissions-based fee for each ton of regulated emissions from the source. The current base fee is inadequate to compensate for the extensive level of effort required to process these permit applications.

State Permit to Operate sources include asphalt plants, academic institutions, crematories and aggregate operations. Under separate rulemaking (COMAR 26.11.02.13 amendments proposed in the Maryland Register on April 22, 2011 and effective on August 22, 2011), the Department has streamlined the State Permit to Operate list such that only sources with the potential to have significant environmental impacts or sources that typically generate significant public interest are required to obtain State Permits to Operate. In addition, some State Permits to Operate may contain synthetic minor limits (i.e. limits that sources voluntarily take to avoid triggering more onerous permitting requirements, such as major Non-Attainment New Source Review). These facilities require more oversight on the part of the Department to ensure that they operate in compliance with their synthetic minor limits. Of the 360 State Permit to Operate sources, currently 142 facilities are operating under synthetic minor limits. The Department is proposing to establish a tiered fee system for State Permit to Operate sources. Under the proposed regulations, non-synthetic minor State Permit to Operate facilities will pay a base fee of \$500 per year and synthetic minor State Permit to Operate facilities will pay a base fee of \$1,000 per year.

Title V Permit sources are the largest air pollutions sources in the state. These sources include power plants, cement plants, chemical plants, federal facilities, a steel mill, a paper mill, and incinerators. In addition to large emission sources, certain smaller environmentally significant sources are required to obtain Title V operating permits (e.g. incinerators and landfills). As a result, these facilities' current emission fees are not commensurate with the level of resources required to review and process their Title V operating permits. Finally, as of July 1, 2011, sources can now be subject to Title V operating permit requirements solely because of Greenhouse Gas (GHG) Emissions for

which no fees are assessed. Under the proposed regulations, facilities required to obtain a Title V operating permit will be required to pay a base fee of \$5000.

### **Sources Affected and Location**

#### COMAR 26.11.02.17 - Fee Schedule: Permit to Construct

Stationary air pollution sources located throughout the State are required to obtain permits to construct. The Air Quality Permits Program issues approximately 300 individual permits to construct per year. These sources are located throughout the entire State, and range in a wide variety of industrial, manufacturing, commercial and service sectors.

#### COMAR 26.11.02.19 – Fee Schedule: Title V Permit or a State Permit to Operate

Certain large air pollution sources located throughout the State are required to obtain a federal Title V Permit or State Permit to Operate. Currently (as of 9/4/12), there are 122 Title V permit sources and 341 State Permit to Operate sources in Maryland.

### **Requirements**

These amendments will require affected sources to pay increased fees for a standard Air Quality Permit to Construct, a State Permit to Operate and a federal Title V permit.

### **Expected Emissions Reductions**

No emission reductions are expected as a result of these amendments.

### **Economic Impact on Affected Sources**

#### Economic Impact of Proposed Fee Increases under COMAR 26.11.02.17

Base fee increase from \$200 to \$500 for approximately 300 permits to construct issued per year:

$(\$500 - \$200) * 300 \text{ permits} = \$90,000$  in additional fees collected annually

New fee of \$1500 for new permitted source category for approximately 45 permits issued per year:

$(\$1,500) * 45 \text{ permits} = \$67,500$  in additional fees collected annually

The proposed amendments clarify that a separate fee should be charged for each of the following source categories: New Source Review Approval, including a Plant-wide Applicability Limit Permit, a Prevention of Significant Deterioration Approval, or a special permit under COMAR 26.11.15. Previously, only one fee of \$20,000 was charged even if more than one type of permit/approval was required. Additional fee collected for sources subject to multiple source categories for approximately one

approval/permit issued per year:  $(\$20,000) * 1$  approval/permit per year = \$20,000 in additional fees collected annually

Total Economic Impact of Proposed Fee Increases under COMAR 26.11.02.17 = \$178,000 annually

#### Economic Impact of Proposed Fee Increases Under COMAR 26.11.02.19

Base fee increase from \$200 to \$500 for non-synthetic minor State Permit to Operate sources:

$(\$500 - \$200) * 199$  sources = \$59,700 in additional fees collected annually

Base fee increase from \$200 to \$1,000 for 142 synthetic minor State Permit to Operate sources:

$(\$1,000 - \$200) * 142$  sources = \$113,600 in additional fees collected annually

Base fee increase from \$200 to \$5,000 for 122 Title V Permit sources:

$(\$5,000 - \$200) * 122$  sources = \$585,600 in additional fees collected annually

Total Economic Impact of Proposed Fee Increases under COMAR 26.11.02.19 = \$758,900 annually

#### **Total Economic Impact (Permit to Construct and Permit to Operate Fees)**

\$178,000 (Permit to Construct Fee Increases) + \$758,900 (Title V and State Permit to Operate Fee increases) = \$936,900 annually.

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

The impact on small businesses is expected to be minimal. There is no small business sector in the State of Maryland that has been identified to incur a substantial economic impact as a result of the proposed amendments. Small businesses typically operate air pollution sources that are subject to general Air Quality Permit to Construct requirements and not individual Air Quality Permit to Construct requirements. The proposed amendments do not increase fees for general Air Quality Permit to Construct.

#### **Submission to EPA as Revision to Maryland's SIP (or 111(d) Plan, or Title V Program)**

This action does not need to be submitted to the U.S. Environmental Protection Agency (EPA) for approval as part of Maryland's State Implementation Plan (SIP). Permit fee schedules are not currently included in the Maryland's SIP.

#### **Is there an Equivalent Federal Standard to these Proposed Amendments?**

There are no federal standards that are considered to be equivalent to the amended regulations.

### Comparison of Permit Fees for Surrounding States

	Permit to Construct	State Permit to Operate	Title V Operating Permit
<b>Maryland</b>	one-time fee of \$200 for general PTC, and \$500-20,500 for complex PTC	base fee of \$500-\$1,000 + annual emission based fee	base fee of \$5,000 + annual emission based fee No application fee
<b>Delaware</b>	one-time fee of \$150 - \$500	no base fee + annual fee: varies \$50 - \$1,000	base fee of \$6,000 - \$243,000 + annual emission based fee of \$3,000 - 175,000
<b>Pennsylvania</b>	one-time fee of \$1,000 - \$22,700	base fee \$375 + \$375 annual fee	base fee of \$750 + annual emission based fee based on consumer price index (CPI)
<b>Virginia</b>	PSD/Major NSR- \$30,000 Minor NSR- \$1,500 Major NSR amendment- \$7,000 Minor NSR amendment- \$750	Base fee (synthetic minor 80% source)- \$1,000 Application fee- \$7,000 Application fee- amendment- \$3,500	Base fee of \$3,500-\$10,000 plus annual emission based fee based on CPI. Application fee- initial Title V permit of \$20,000 Application fee- renewal Title V permit of \$10,000 Application fee- Title V amendment (except administrative)- \$3,500
<b>West Virginia</b>	one-time fee of \$1,000 for general PTC, and \$1,000-10,000 for complex PTC	no base fee + annual fee: varies \$200 - \$10,000	no base fee + annual emission based fee based on CPI

From Virginia Fee Title V Survey:

1. Georgia- minimum fee of \$4,100 for Title V sources
2. North Carolina- base fee of \$6,500 for all Title V facilities
3. Tennessee- minimum fee of \$7,500 for major sources
4. Indiana- \$1,875 base Title V fee

# Title 26 DEPARTMENT OF THE ENVIRONMENT

## Subtitle 11 AIR QUALITY

### Chapter 02 Permits, Approvals, and Registration

Authority: Environment Article, §§1-404, 2-103, 2-301—2-303, 2-401, 2-403, and 2-404, Annotated Code of Maryland

#### **.17 [Fee Schedule for New or Modified Emissions Units.] Fee Schedule: Permit to Construct.**

A. A person who submits an application for a permit to construct [a new or modified emissions unit] shall pay [a base fee of \$200 plus any applicable additional fees listed in §B of this regulation.] *one of the following:*

(1) *A fee of \$200 for tank farms at motor vehicle or off-road vehicle refueling facilities, charbroilers, and pit barbecues; or*

(2) *A base fee of \$500 for all other sources, plus any applicable additional fees listed in §B of this regulation.*

B. [A person who submits an application for a permit to construct an emissions unit that is subject to T-BACT requirements under COMAR 26.11.15.05, permit to operate requirements under Regulation .13 of this chapter, NESHAP requirements under COMAR 26.11.15.02, NSPS requirements under COMAR 26.11.06.12, PSD requirements under COMAR 26.11.06.14, or NSR requirements under COMAR 26.11.17, shall pay the following additional fees as applicable: ] *Additional Fees.*

[Category ]

[Additional Fee]

(1) [Dry cleaner, fuel-burning] *Fuel-burning equipment burning gas [or No. 2 oil] with a rated heat input capacity of at least 30 million Btu per hour but less than 50 million Btu per hour[, ground water or on-site soil remediation installation, paint spray booth] or fuel-burning equipment burning No. 2 fuel oil with a rated heat input capacity of at least 10 million Btu per hour but less than 50 million Btu per hour- \$300 each;*

(2) [Any other toxic source] *A source that:*

(a) *Does not discharge a Class I TAP[; ],*

(b) *Has emissions of less than 25 pounds per day[;], and*

(c) *Is not constructed at an existing premises that has total emissions of greater than 35 pounds per day- \$300;*

(3) [Other toxic source] *A source subject to T-BACT but not required to obtain a State permit to operate- \$800;*

(4) *A source required to obtain a State permit to operate but not covered by §B(5), (6), (7) or [(7)] (8) of this regulation- \$1,000;*

(5) *A NESHAP or NSPS source, except fuel-burning equipment with a rated heat input capacity of less than 50 million Btu per hour burning either gas or No. 2 fuel oil, but not covered by §B(6), (7), or [(7)] (8) of this regulation- \$1,500;*

(6) *A source that requests a limitation on emissions to preclude applicability of major source regulations, and is not covered by §B(7) or (8) of this regulation- \$1,500;*

[(6)] (7) *A source that demonstrates compliance with COMAR 26.11.15 using a dispersion model other than a screening model, and is not covered by [§B(7)] §B(8) of this regulation- \$5,000; or*

[(7) PSD or NSR source, or a toxic source applying for] (8) *A source applying for a PSD approval, an NSR approval (including a Plantwide Applicability Limit (PAL) permit), or a special permit under COMAR 26.11.15- \$20,000 each.*

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

A. [The owner or operator of a source that is required to obtain, and have in current effect, a permit issued under Title V of the federal Clean Air Act Amendments of 1990, 42 U.S.C. §§7661—7661f, including a Part 70 permit, or a State permit to operate, shall pay an annual fee consisting of a base fee of \$200 plus an emission-based fee for each ton of regulated emissions from all installations at the plant or facility.] *Annual Fees.*

(1) *The owner or operator of a source that is required to obtain, and have in current effect, a permit issued under Title V of the federal Clean Air Act Amendments of 1990, 42 U.S.C. §§7661—7661f, including a Part 70 permit, shall pay an annual fee consisting of a base fee of \$5000 plus an emission-based fee for each ton of regulated emissions from all installations at the plant or facility.*

(2) *The owner or operator of a source that is required to obtain, and have in current effect, a State permit to operate, shall pay an annual fee consisting of a base fee, in accordance with §A(2)(a) or (b) of this regulation, plus an emission-based fee for each ton of regulated emissions from all installations at the plant or facility.*

(a) *Synthetic minor sources- \$1000*

(b) *All other Sources- \$500*

B. – E. (text unchanged)



# ***Facts About...***

## **Amendments to Regulations .07, .11, and .12 under COMAR 26.11.02 related to Procedures for Obtaining Permits to Construct Certain Significant Sources**

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### **Purpose of Amendments**

The primary purpose of these amendments is to implement the new statutory requirements of Senate Bill 1065 which were effective on January 1, 2010.

### **Background**

Senate Bill 1065 expanded standing for challenges to most of the Department's major permits and substitutes direct judicial review for the current contested case process for those same permits. The most significant impact on the Department's permitting process is the elimination of the Office of Administrative Hearings' (OAH) adjudicatory hearing process. Instead, permits issue and are effective upon a final determination and citizens contesting the issuance of a permit appeal directly to circuit court. While the Department continues to follow many of the existing procedures governing issuance of permits, the new law requires some regulatory and procedural changes.

### **Sources Affected and Location**

These amendments affect any source in Maryland applying for an air quality permit to construct that is subject to expanded public participation requirements.

### **Requirements**

These amendments implement the requirements of Senate Bill 1065 as discussed above.

### **Expected Emissions Reductions**

These amendments solely affect the administrative permit issuance process. These amendments do not change any applicable requirements as they relate to air emissions; therefore, there are no expected emissions reductions.

### **Economic Impact on Affected Sources and the Department**

These amendments will eliminate the public's opportunity to request a contested case hearing on a proposed air quality permit to construct. Instead, the public will need



to seek judicial review. For most sources, these amendments will have no effect since, currently, very few air quality permits to construct result in requests for contested case hearings. It is likely that, as result of these amendments, even fewer permits will result in requests for judicial review than received requests for contested case hearings.

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

The impact to small businesses will be the same as on all affected sources. Any impact will be minimal since it is even less likely that air quality permits to construct for small business will be subject to judicial review.

### **Submission to EPA as Revision to Maryland's SIP (or 111(d) Plan, or Title V Program)**

This action will be submitted to the U.S. Environmental Protection Agency (EPA) for approval as part of Maryland's State Implementation Plan.

### **Is there an Equivalent Federal Standard to this Proposed Regulatory Action?**

No

# Title 26 DEPARTMENT OF THE ENVIRONMENT

## Subtitle 11 AIR QUALITY

### Chapter 02 Permits, Approvals, and Registration

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

#### **.07 Procedures for Denying, Revoking, or Reopening and Revising a Permit or Approval.**

A. [Notification of Denial; Hearings. A denial of a permit to construct, an approval, a State permit to operate, or the State-only enforceable provisions of a Part 70 permit shall be served as summonses are served or by certified mail upon the applicant, and is final unless the applicant requests a hearing before the Department within 15 days after service. When a hearing is requested by the applicant, it shall be held pursuant to the contested case provisions of State Government Article, Title 10, Subtitle 2, and Environment Article, §2-605, Annotated Code of Maryland.] *Denial of Approvals, State Permits to Operate or State-Only Enforceable Provisions of a Part 70 Permit.*

(1) *Denial is final unless the applicant requests a hearing before the Department within 15 days after service.*

(2) *When a hearing is requested by the applicant, it shall be held pursuant to the contested case provisions of State Government Article, Title 10, Subtitle 2.*

(3) *Denials shall be served as summonses are served, or by certified mail upon the applicant.*

#### **B. Denial of Permits to Construct.**

(1) *A denial of a permit to construct a source, except for a permit to construct a source subject to Regulation .12 of this chapter, is a final determination subject to judicial review in accordance with Regulation .11M of this chapter.*

(2) *Notice of the denial of a permit to construct shall be given in accordance with the notice of final determination provisions in Regulation .11L of this chapter.*

[B.]C. **Revoking or Reopening a Permit.** Except as protected by a permit shield provided in accordance with COMAR 26.11.03.23, the Department may issue an order revoking or reopening a State permit to operate, or the State-only enforceable provisions of a Part 70 permit, for violation of a provision of the permit or this subtitle. An order revoking or reopening a permit shall be served as summonses are served or by certified mail upon the permittee, and is final unless the permittee requests a *contested case* hearing [before the Department] within 15 days after service. When a hearing is requested by the permittee, it shall be held pursuant to the contested case provisions of State Government Article, Title 10, Subtitle 2, and Environment Article, §2-605, Annotated Code of Maryland.

#### **.11 Procedures for Obtaining Permits to Construct Certain Significant Sources.**

A. (text unchanged)

B. Exception for an Approval and for Certain Control Equipment. Notwithstanding the requirements of §A, this regulation does not apply to:

(1) (text unchanged)

(2) [A source that constitutes] *The construction or installation of air pollution control equipment for which a permit to construct is required, as provided in Regulation .09 of this chapter, and that will control an existing source.*

(3) *Permits to construct that are subject to COMAR 26.11.02.12.*

C. — G. (text unchanged)

#### **H. Tentative Determination.**

(1) The Department shall prepare a tentative determination regarding the application. The *content of the tentative determination* shall include:

[(1)] (a) — [(4)] (d) (text unchanged)

[(5)] (e) If the tentative determination is to issue the permit, a draft permit, which [will] *shall* be available to the public for inspection and copying.

(2) *In addition to the content of the tentative determination, the following documents shall be made available to the public for inspection and copying no later than the date of issuance of the tentative determination:*

(a) *The permit application and all supporting documents submitted with the application;*

(b) *All non-privileged documents the Department relied upon in making the tentative determination; and*

(c) *A privilege log that identifies all withheld documents and states the reasons for withholding each document.*

I. Notice of Tentative Determination; Public Comment; Public Hearing. The Department shall publish or require the applicant to publish a notice regarding the tentative determination that satisfies the requirements of Environment Article, §1-602(a), Annotated Code of Maryland. [As determined by the Department, the] *The notice shall provide the opportunity for written public comment [within] for a period of 30 days [and], which may be extended no more than once by an additional 60 days, upon written request received by the Department within the original comment period. As determined by the Department, the notice shall provide either that a public, nonadjudicatory hearing will be held regarding the tentative determination or that the public may request in writing within 20 days that a public hearing be*

held. If the Department decides to hold a public hearing because of requests for a hearing from the general public filed in writing within the 20-day request period, or from the applicant, the Department shall publish or require the applicant to publish a notice regarding the hearing that satisfies the requirements of Environment Article, §1-602(a), Annotated Code of Maryland.

J. Public Comments. If a public hearing is held regarding the tentative determination, the applicant shall attend the hearing and present information concerning the application. Written public comments will be accepted if they are received by the Department at the public hearing or within 5 days after the public hearing *or before the close of the public comment period*. Oral public comments may be made at the public hearing. The Department shall consider all public comments that raise issues of law or material fact regarding an application for a permit or a tentative determination, but only if the issues are pertinent to requirements of the Clean Air Act or State air pollution control law applicable to the proposed permit to construct. Comments raising issues that relate to the location or nature of a proposed source may be considered only if the commenter first demonstrates to the satisfaction of the Department that the Department is required by law to consider the issues.

K. Final Determination.

(1) The Department shall prepare a final determination if:

[(1)] (a) — [(2)] (b) (text unchanged)

[(3)] (c) The final determination is substantively different from the tentative determination [and all persons aggrieved by the final determination have not waived in writing their right to request a contested case hearing].

(2) *The final determination shall constitute the Department's final decision.*

L. Notice of Final Determination.

(1) If the Department is required to prepare a final determination, as provided in §K of this regulation, the Department shall:

(a) publish or require the applicant to publish a notice of the final determination that satisfies the requirements of Environment Article, §1-602(a), Annotated Code of Maryland;

(b) *if the final determination differs substantively from the tentative determination, provide, in the notice of final determination, the opportunity for written public comment for a period of 30 days; and*

(c) *consider all public comments submitted under §§ (1)(b) of this subsection, subject to the criteria set forth in COMAR 26.11.02.11J.*

(2) If the Department is not required to prepare a final determination under §K of this regulation, the Department shall issue or deny the permit and the tentative determination becomes the final determination *and shall constitute the Department's final decision.*

(3) *The Department shall electronically post notice that the tentative determination has become the final determination on the Department's website.*

M. [Contested Case Hearing.

(1) Not later than 15 days after publication of the notice required by §L of this regulation, a person may request a contested case hearing to appeal a final determination to issue or deny a permit subject to this regulation by submitting a written request for adjudication to the Department if the submission contains factual allegations with sufficient particularity to demonstrate that:

(a) The person is aggrieved by the final determination; and

(b) The final determination is legally inconsistent with any provisions of law applicable to the final determination being challenged or based upon an incorrect determination of a relevant and material fact.

(2) In deciding whether a contested case hearing should be conducted, the Department may consider whether the allegations that are the basis for the request were raised with particularity at the public hearing or during the public comment period on the tentative determination.

(3) Procedures for referral of requests for contested case hearings and for conducting these hearings are set forth in State Government Article, Title 10, Subtitle 2, and Environment Article, §1-601 et seq., Annotated Code of Maryland, and COMAR 28.02.01 and 26.01.02. COMAR 26.01.02 applies only to the extent that it contains procedures relating to matters that are not addressed at COMAR 28.02.01.

(4) As provided in Environment Article, §1-605(d), Annotated Code of Maryland, matters related to zoning and land use may not be raised in a contested case hearing except as expressly provided in Environment Article, §1-605(d), Annotated Code of Maryland.]

**Judicial Review.**

(1) *In accordance with § 1-605 of the Environment Article, Annotated Code of Maryland, a final determination by the Department to issue or deny a permit subject to this regulation shall be subject to judicial review at the request of any person who:*

(a) *Meets the threshold standing requirements under Federal law; and*

(b) *Is the applicant or participated in a public participation process through the submission of written or oral comments, unless an opportunity for public participation was not provided.*

(2) *Judicial review shall be on the administrative record before the Department and limited to objections raised during the public comment period, unless the petitioner demonstrates that:*

(a) *The objections were not reasonably ascertainable during the comment period; or*

(b) *Ground for objections arose after the comment period.*

(3) Unless otherwise required by statute, a petition for judicial review shall be filed with the Circuit Court for the County where the application for the permit states that the proposed activity will occur.

(4) A person submitting a petition for judicial review shall file the petition within 30 days after publication of a notice of final determination.

(5) Except as expressly provided in § 1-605(d) of the Environment Article of the Annotated Code of Maryland, a party to the judicial review action may not challenge a facility's compliance with zoning and land use requirements.

(6) Judicial review under this regulation shall be limited to a record compiled by the Department consisting of:

(a) Any permit application and any data submitted to the Department in support of the application;

(b) Any draft permit issued by the Department;

(c) Any notice of intent from the Department to deny the application or to terminate the permit;

(d) A statement or fact sheet explaining the basis for the determination by the Department;

(e) All documents referenced in the statement or fact sheet explaining the basis for the determination by the Department;

(f) All documents, except documents for which disclosure is precluded by law or that are subject to privilege, contained in the supporting file for any draft permit;

(g) All comments submitted to the Department during the public comment period, including comments made on the draft application;

(h) Any tape or transcript of any public hearings held on the application; and

(i) Any response to any comments submitted to the Department.

N. For the purposes of this regulation, a notice that satisfies the requirements of Environment Article, §1-602(a), Annotated Code of Maryland, is a notice that is published at least once a week for 2 consecutive weeks in a daily newspaper of general circulation in the geographic area in which the proposed source is, *or will* [to] be, located. The Department may also require the applicant to mail notice to any other person who has requested the notice, or to the person's authorized representative, and may require the applicant to post the notice in the vicinity of the proposed source or at public facilities in the geographic area of the proposed source. The applicant shall bear all costs related to providing the notice.

**.12 Procedures for Obtaining Approvals of PSD Sources and NSR Sources and [,] 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.**

A. Applicability. Except as provided in §B of this regulation, the owner or operator of a source shall comply with the procedures in this regulation when applying for the following:

(1) (text unchanged)

(2) [Except as required in] *The following permits to construct, unless they are subject to the judicial review provisions of Regulation .11 of this chapter:*

(a) — (b) (text unchanged)

(3) (text unchanged)

(4) A permit to construct a MACT [determination] *source as determined* on a case-by-case basis in accordance with 40 CFR Part 63, Subpart B.

B. [Alternative Procedures. The owner or operator of a PSD source or an NSR source may elect to use the procedures of Regulation .11 of this chapter to obtain the approval of the source. In this event, an application for an approval and for a permit to construct shall be submitted concurrently and will be processed simultaneously. The time limits in Regulation .11 of this chapter may be extended by the Department for sources electing to have applications processed simultaneously under that regulation. An approval issued under Regulation .11 of this chapter is not subject to a request for a contested case hearing under Regulation .11M of this chapter.]

*Procedures. The owner or operator of a source subject to this regulation shall comply with the procedures under Sections C. —L. of this regulation:*

C. — L. (text unchanged)