

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 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

Notice of Proposed Action

[16-245-P]

The Secretary of the Environment proposes to amend Regulation .07 under **COMAR 26.04.02 Sewage Disposal and Certain Water Systems for Homes and Other Establishments in the Counties of Maryland Where a Public Sewage System Is Not Available**.

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, 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 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-) Expenditure (E+/E-)	Magnitude
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 BAT systems 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, or fax to 410-537-3163. Comments will be accepted through October 17, 2016. A public hearing has not been scheduled.

.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] *and* the Atlantic Coastal Bays [watershed] *Critical Areas*;

[(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 Areas*.

B. A person may not install, or have installed, for new construction or a replacement system 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* [includes] *include* the renovation, repair, or change of use 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] *unless*:

(1) *The residence or building is located in a Critical Area; and*

(2) *The Approving Authority finds that residence or building's existing onsite sewage disposal system is not adequate to serve the proposed changes, in accordance with this chapter.*

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.*

BENJAMIN H. GRUMBLES
Secretary of the Environment