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July 15, 2019

Via Electronic Case Filing

The Honorable George L. Russell, III
United States District Judge
District of Maryland
101 West Lombard Street
Baltimore, MD 21202

Re: *Wheelabrator Baltimore, L.P., et al. v. Mayor and City Council of Baltimore*, No. 1:19-cv-01264- GLR (D. Md.)

Dear Judge Russell:

We write on behalf of Plaintiffs, a coalition of large and small Baltimore businesses and trade associations in the solid waste industry, which have filed this case to challenge the Baltimore Clean Air Act (“the Act”), enacted on March 7, 2019 by the Baltimore City Council. As is explained in more detail below, Plaintiffs cannot meet the Act’s approaching deadlines for compliance with certain emission standards contained in the Act and will be forced to shut down unless the Act is held unlawful. Plaintiffs accordingly request that the Court convene an in-person case management conference at the Court’s earliest convenience, but if possible not later than August 2, 2019. As will be explained at the conference, Plaintiffs’ claims focus principally on preemption of the Act by federal and state law, so no discovery is needed, and the Court can promptly decide the key issues here.

Plaintiffs filed their Complaint challenging the Act on April 30, 2019 and served Defendant City of Baltimore on May 1, 2019. (Dkt. No. 1). The City requested and Plaintiffs consented to a 60-day extension to respond to the Complaint, which the Court granted upon Defendant’s motion. (Dkt. No. 19). The City’s response to the Complaint is now due on July 22, 2019. Plaintiffs first raised the need to expedite the disposition of this matter on May 20, 2019, when it consented to the City’s request for an extension to respond to the Complaint, requesting that the City join Plaintiffs request for the Court to hold a case management conference “as soon as possible within the 60-day extension period.” The Parties have since met to discuss the unique circumstances of the case and have exchanged proposed dispositive motion briefing schedules.



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But the City's July 22nd response deadline is now only days away, and the City has not yet agreed to join Plaintiffs' request for an expedited case management conference. Plaintiffs believe it is appropriate that the Court schedule a case management conference forthwith to allow the Plaintiffs to explain the exigency they face (which also threatens safe solid waste management City-wide) and to discuss with the Court an expedited schedule.

The Act's terms require Wheelabrator Baltimore and Curtis Bay ("Facility Plaintiffs") to undertake major engineering, permitting, and construction activities, which are unlikely to bring the Facility Plaintiffs into compliance in any event. The Facility Plaintiffs cannot complete the necessary work to attempt to meet the Act's major implementation deadlines in September 2020 and January 2022, requiring them to shut down their facilities to avoid potential civil and strict criminal liability imposed by the Act. Facility shutdowns spanning multiple months for construction projects will cause significant, multi-million dollar impacts on the Facility Plaintiffs and their customers, including their co-Plaintiffs, who depend on these waste combustors, and will require major adjustments in how Baltimore residents, businesses, and institutions manage their solid waste.

Given the significant disruption facing the Plaintiffs and solid waste management in the Baltimore region, Plaintiffs request that the Court approve a briefing schedule in which the Parties' respective dispositive motions will be fully briefed by October 2019. After the Defendant files its motion to dismiss on July 22nd, the Plaintiffs plan to oppose the motion to dismiss and move for partial summary judgment on their preemption claims only (first through fifth causes of action) by August 2nd. The remainder of the Plaintiffs' proposed schedule is set forth below, leading to completed briefing by October 4th of cross-motions for summary judgment and the City's motion to dismiss. Preemption claims present issues of law suitable for disposition via summary judgment, and because the basic facts and documents underlying the preemption claims are subject to judicial notice, they are ripe for disposition without the need to conduct discovery.

Plaintiffs propose the following briefing schedule, and are willing to undertake concurrent briefing for the City's dispositive motion and the Plaintiffs' dispositive motion in order to facilitate an expedited resolution. The alternative to expedited briefing and decision is a preliminary injunction motion in the face of a shutdown, which would require a tremendous amount of resources and time from all Parties and the Court.

Date	Plaintiffs File	Defendant Files
Monday, July 22		Motion to Dismiss



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Friday, Aug. 2	Opposition to Motion to Dismiss; Motion for Partial Summary Judgment (Counts 1-5)	
Friday, Sept. 6		Reply in Support of Motion to Dismiss; Opposition to Plaintiffs' Motion for Partial Summary Judgment; (Cross-Motion for Partial Summary Judgment)
Friday, Sept. 20	Reply in Support of Motion for Partial Summary Judgment; (Opposition to Cross-Motion for Summary Judgment)	
Friday, Oct. 4		(Reply in Support of Cross-Motion for Summary Judgment)

In a further effort to expedite a resolution of this matter, Plaintiffs have reviewed the Court's customary scheduling order, and address the relevant items below.

1. Consent to Having Case Transferred to Magistrate Judge

The Plaintiffs do not consent to having a U.S. Magistrate Judge conduct all further proceedings in this action.

2. Timing of Settlement Conference

Although the Plaintiffs do not believe that they will be in a position to discuss settlement until after the dispositive motions are decided, the Plaintiffs agree to confer about participating in a settlement conference before a Magistrate Judge at an appropriate stage of the pretrial proceedings. Should the Parties agree to participate in a settlement conference, they will file a request with the Court asking that a settlement conference be scheduled.

3. Discovery of Electronically Stored Information



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The Plaintiffs request to defer discovery until after the proposed dispositive motions are decided. At that time, if discovery becomes necessary the Parties will confer about a stipulation regarding electronically stored information to make discovery more efficient. The Parties do not anticipate that the discovery of electronically stored information will be problematic.

4. Expert Discovery

The Plaintiffs request that expert discovery be deferred until after the proposed dispositive motions are decided. The Parties will confer about expert discovery if necessary at that time.

5. Preliminary Scheduling Order

The Parties request that the Court defer entering a preliminary scheduling order setting deadlines other than those proposed above until after the dispositive motions are decided. The Court's decision on those motions will determine whether any claims remain pending that warrant ordering further deadlines.

6. Deposition Hours

The Plaintiffs request that depositions be deferred until after the proposed dispositive motions are decided. The Parties will confer about depositions if necessary at that time.

7. Trial Date and Expected Duration

The dispositive motions the Plaintiffs have proposed may obviate the need for a trial in this case. For this reason, the Parties request that a trial date not be set until after those motions are decided.

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The Plaintiffs appreciate the Court's attention to this request and look forward to further discussions with the Court at an in-person case management conference.



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Respectfully submitted,

/s/ Joshua H. Van Eaton

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L.P., Energy Recovery Council, National Waste &
Recycling Association, and TMS Hauling, LLC*

/s/ M. Trent Zivkovich

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Michael Powell

Counsel for Plaintiff Curtis Bay Energy, L.P.

(signed with permission from M. Trent Zivkovich
and Michael Powell)

Cc: Thomas Webb, Esq., Counsel for Defendant Mayor and City of Baltimore
Matthew Nayden, Esq., Counsel for Defendant Mayor and City of Baltimore
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