

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)**

<p>WHEELABRATOR BALTIMORE, L.P. et al.,</p> <p style="text-align: center;"><i>Plaintiffs,</i></p> <p style="text-align: center;">v.</p> <p>MAYOR AND CITY COUNCIL OF BALTIMORE,</p> <p style="text-align: center;"><i>Defendants.</i></p>	<p>Civil Action No. 1:19-cv-01264</p>
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**MOTION FOR LEAVE TO FILE
BRIEF AMICUS CURIAE**

of the

**City of Ames (IA), ecomaine (ME), City and County of Honolulu (HI), Kent County (MI),
Lancaster County Solid Waste Management Authority (PA), Lee County (FL), Marion
County (OR), Solid Waste Authority of Palm Beach County (FL), Solid Waste Disposal
Authority of the City of Huntsville (AL), Spokane Regional Solid Waste Authority (WA),
and the York County Solid Waste and Refuse Authority (PA)**

Amici curiae the Local Government Coalition for Renewable Energy respectfully move this Court for leave to file the accompanying brief in support of the Plaintiffs in the above-captioned case. *Amici*, each of which are listed in the caption, are an unincorporated national coalition of cities, counties and special authorities responsible for managing the municipal solid waste (MSW) generated in their communities. *Amici's* interest in this case relates to the fact that each of them has developed a modern waste-to-energy (WTE) facility as the best means for managing their communities' MSW. In support of this motion, and in accordance with the Court's Standing Order 2018-07, *amici* note the following:

A. This case has considerable importance for *amici*. The state laws that apply to each of the *amici* specify that management of MSW is a primary responsibility of local government.

Although WTE is considerably more costly than the alternative of landfill disposal, *amici* (and their communities) turned to WTE as the best alternative for managing non-recycled waste due to WTE's significant environmental advantages over landfilling. A principal reason for the cost disparity noted above is the considerable expense of WTE facilities' state-of-the-art emissions control technology.

The benefits of WTE technology are clear. In that regard, the U.S. Environmental Protection Agency (EPA) has emphasized that the level of emissions control achieved by modern WTE facilities "has been outstanding," with emission reductions for various pollutants in the 96-99% range following EPA's implementation of MACT (Maximum Achievable Control Technology) standards in the early 1990's together with EPA's subsequent increases in the stringency of the MACT standards. See <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2005-0117-0164>. Not surprisingly, another federal agency, the National Renewable Energy Laboratory, describes EPA's emission standards for WTE facilities as "the most stringent in the world." *Waste Not, Want Not: Analyzing the Economic and Environmental Viability of Waste-to-Energy (WTE) Technology for Site-Specific Optimization of Renewable Energy Options*, NREL/TP-6A50-52829, p. 2, February 2013, <http://www.nrel.gov/docs/fy13osti/52829.pdf>.

The City of Baltimore ordinance at issue here, Ordinance 18-0306, turns these facts on their collective head by imposing an additional regulatory regime that is at odds with the comprehensive and highly protective federal-state regulatory system that governs WTE facilities. Moreover, the record also shows – in public statements of the proponents of Ordinance 18-0306 – that their underlying objective was not further regulation of WTE emissions but rather (in the proponents' own words) "to shut down Wheelabrator." See <https://www.baltimoresun.com/maryland/baltimore-county/ph-tt-wheelabrator-0417-story.html>, *Wheelabrator Sues Baltimore County For Not Sending Enough Trash to Its Incinerator*, Baltimore Sun, April 12, 2019.

Whether cast as emission controls or, as Defendants themselves state, simply "to shut down Wheelabrator," the objectives that underlie Ordinance 18-0306 implicate important public policy

issues that could affect other WTE facilities, including *amici's* facilities. For these reasons, *amici's* brief addresses important facts regarding the considerable environmental benefits of WTE technology, and provides essential context for the Court's consideration of the broader ramifications of the public policy issues that underlie this lawsuit.

B. Submission of this brief is supported by and has the consent of the Plaintiffs, Wheelabrator Baltimore, L.P., *et al.* Counsel for Defendants advises that Defendants do not at this time consent to the filing of *amici's* brief.

C. No party's counsel authored this brief in whole or in part. Nor did any party or its counsel contribute any money to fund the preparation and/or submission of this brief.

CONCLUSION

In view of the foregoing, *amici curiae* the Local Government Coalition for Renewable Energy respectfully requests that the Court authorize the filing of the accompanying brief in support of the Plaintiffs.

Respectfully submitted,

/Benjamin J. Lambiotte
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