

For Immediate Release
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Clean Air Advocates Denounce Court Ruling Against Baltimore Clean Air Act

Baltimore, MD – Efforts for cleaner air in Baltimore had a bad day Friday, as two waste incinerators in the city succeeded in getting a federal court to strike down the Baltimore Clean Air Act. Passed unanimously by City Council in February 2019, the law would have gone into effect this September, requiring two large waste incinerators to meet modern emissions requirements or close down.

The incinerators in question are Wheelabrator Baltimore, a 2,250 ton/day trash incinerator that is the city's largest industrial air polluter according to the U.S. Environmental Protection Agency, as well as Curtis Bay Medical Waste Services, the nation's largest medical waste incinerator, which takes in waste from 20 states, DC, and Canada.

In a 24-page decision, the court upheld half of the city's legal arguments, and dismissed the incinerator companies' claims that they were unfairly targeted. However, the court struck down the Baltimore Clean Air Act on the basis that the stricter requirements conflict with state law because they "prohibit" and "criminalize" activity that the state allows under state-issued air pollution permits.

One of the reasons given by the court is that the Baltimore Clean Air Act undermines the state's authority to decide the best way to achieve compliance with ambient air quality standards.

"Maryland law clearly authorizes local governments to 'set emission standards or ambient air quality standards' so long as the local standards are no less stringent than the state," said attorney Mike Ewall, Executive Director of the environmental group Energy Justice Network. "The court got it wrong. They're essentially gutting state law by interpreting anything stricter as being illegal."

Councilman Reisinger, who represents the Southern Baltimore district where both incinerators sit, sponsored the Baltimore Clean Air Act. "This is a slap in the face to the city residents suffering from asthma and other health problems," he said. "Just one of the many air pollutants coming out of Wheelabrator has been shown to cause \$55 million in annual health damages throughout the region, mostly from cutting people's lives short."

Councilwoman Clarke, who sponsored and pushed for the law, is calling on the city to appeal this ruling. "We need the city to appeal this decision," she stated. "It's a matter of the health and well-being of us all."

The state currently authorizes Wheelabrator to release 150 parts per million (ppm) of nitrogen oxides, air pollutants known to trigger asthma attacks, down from a limit of 205 ppm in effect until last year. The Baltimore Clean Air Act would have set a new limit of 45 ppm, which is the same limit that new incinerators have to meet, such as the controversial Energy Answers incinerator that was permitted to be built in Baltimore. That incinerator was abandoned in 2016 after five years of public opposition. The state also required a limit of 45 ppm for a proposed new Wheelabrator trash incinerator in Frederick County that was permitted but never built, as it was stopped in 2014 after eight years of local opposition.

The Baltimore Clean Air Act mandated that both incinerators monitor real-time for 20 air pollutants and disclose the data on a public website. It also required that they meet modern standards followed by the newest waste incinerators in North America for four major air pollutants: mercury and sulfur dioxides by September 2020, and dioxins and nitrogen oxides (NOx) by January 1, 2022. Wheelabrator has stated that the installation of these modern pollution controls would be so costly that they'd be forced to close. A recently-released report commissioned by Wheelabrator showed that the nitrogen oxide controls alone would cost \$60-90 million to install.

The Baltimore Clean Air Act is an initiative of Energy Justice Network, a national non-profit that helps community groups campaign to "stop dirty energy and waste facilities," primarily waste incinerators. It was supported by 36 other community, public health, labor, civil rights, and environmental groups in the Clean Air Baltimore Coalition.

A similar local clean air law, also developed by Energy Justice Network, was upheld in federal court in Pennsylvania in 2008, when a local government passed a law regulating medical waste incinerators and crematoria, dissuading a company from building a crematory.

Please find a copy of the Act, factsheets and Frequently Asked Questions, a list of supporters, and local press coverage at www.cleanairbmore.org/cleanairact

All filings in the lawsuit are available at www.cleanairbmore.org/cleanairact/lawsuit

Federal and state laws granting authority for local clean air laws:
www.cleanairbmore.org/uploads/LegalAuthority.pdf

NOx emissions limits infographic: www.cleanairbmore.org/uploads/NOx.pdf

Recent report on cost of NOx controls at Wheelabrator:
www.cleanairbmore.org/uploads/NOxControlStudy.pdf

Pennsylvania law upheld in federal court: www.actionpa.org/ordinances (see sidebar re: Kulpmont Borough)

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