



SUMMARY AND FREQUENTLY ASKED QUESTIONS & ANSWERS
Regarding Proposed Regulatory Changes for COMAR 26.04.02.07
As of: September 2016

SUMMARY OF REGULATORY CHANGES:

1. Removes the requirement for Best Available Technology for the removal of nitrogen (BAT) installation on new construction outside of Chesapeake Bay and Atlantic Coastal Bay Critical Areas (within 1,000 feet of tidal water)
2. Statewide, 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 5,000 gallons per day or greater unless sewage disposal system utilizes BAT or equivalent technology.
3. Redefines new construction to NOT include renovation or repair of an existing residence outside of the Chesapeake Bay and Atlantic Coastal Bay Critical Areas.
4. 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.
5. Adds a provision that all new BAT systems will be sold with both a 2 year O&M contract and warranty. This is a new regulatory requirement. (Currently all Bay Restoration Funded BAT systems included the first 5 years of O&M as part of the grant).
6. Removes the requirement for a service contract with a certified service provider, but maintains that a system must be operated and maintained by a certified service provider. The owner must ensure the system is inspected and maintained at a minimum of once per year.

What are the proposed regulatory changes?

Maryland Department of the Environment drafted a regulatory action to change the Code of Maryland Regulations (COMAR) 26.04.02.07. The purpose of this action is to reform the universal requirement that BAT units be installed outside of the Chesapeake Bay and Atlantic Coastal Bays Critical area for all new construction, unless the local jurisdiction 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.

Are the regulation changes in effect now?

Not at this time

When can we expect the regulations to change?

The final adoption date of draft regulations is not available at this time. The draft regulatory changes were submitted to the Administrative, Executive and Legislative Review committee (AELR) on August 22, 2016. The AELR Committee reviews the proposed changes, the draft regulations are published on the Maryland Register for 45 days, which includes a 30 day public comment period. The proposal to change the regulations may take several months; a final date is not known at this time.

Can I submit a septic permit today that does not indicate a BAT unit will be installed?

No, the regulations that are currently in place are applicable and every Approving Authority must adhere to those regulations.

What if I have a septic permit and want to amend it to remove the BAT unit?

No, the regulations that are currently in place are applicable and every Approving Authority must adhere to those regulations.

If I need an occupancy permit for my new construction now, do I need to install a BAT unit?

Yes, the regulations that are currently in place are applicable and every Approving Authority must adhere to those regulations.

My new construction is not to be completed until next year; can I hold off on installing the BAT unit?

Yes, if the Approving Authority is in agreement and the property will meet all requirements under the draft regulation. However, use and occupancy of a new structure cannot be approved until the septic construction permit is finalized.

Can a homeowner take an existing BAT and convert it to a conventional septic system or make the BAT inoperable?

The Approving Authority may allow this proposed change on privately purchased BATs at their discretion so long as the property is approvable with a conventional septic disposal system and the draft regulations are adopted as final.

If the property received any Bay Restoration Funds (partial or full grant) for the purchase, installation, and operation and maintenance (O&M) contract, the BAT shall not be converted to a conventional septic system or be made inoperable.

Must a homeowner maintain service in perpetuity of the BAT system?

Yes, the regulation does not change the requirement for the operation and maintenance in perpetuity. Any BAT unit installed in Maryland, existing or proposed, must be serviced by a certified service provider.

Can homeowners remove the Agreement and Easement from the deed to their property?

The Agreement and Easement may be removed from the deed of the property if BRF grant was not utilized at the property, and the local jurisdiction has not enacted a code that will require additional stipulations for the Agreement and Easement.

Does anything change with the BRF funding?

The prioritization of funding is set in MD Annotated Code and cannot be altered by regulation. At a later date, the MDE Water Management Administration and the MDE Water Quality Financing Administration will re-evaluate the funding levels per Approving Authority as per the required amounts of funds for that Approving Authority.

Can an existing 5 year Operation and Maintenance contract be changed to a 2 year after the regulation is in effect?

If the property received Bay Restoration Funds for the purchase, installation, and O&M contract, the O&M contract cannot be reduced. If the property did not utilize BRF funds, the homeowner may renegotiate with the manufacturer and service provider for a two year contract.