



BUILDING PERFORMANCE IMPROVEMENT BOARD MEETING NOTES

Wednesday, May 24, 11 am to 1 pm

In attendance:

Name	In-Person	Virtual	Role
Emily Curley	X		DEP staff liaison
Stan Edwards	X		DEP staff support
Cuiyin Wu		X	DEP staff support
Garrett Fitzgerald		X	DEP staff support
Rhett Tatum	X		Member
Daniel Cleverdon	X		Member
Amanda MacVey		X	Member
Andrew Rivas	X		Member
Lawrence Carroll	X		Member
Sheena Oliver		X	Member
Jill Goodrich		X	Member
Luke Lanciano		X	Member
Adam Landsman		X	Member
Mike Dieterich		X	Member
Julie Wolfington		X	Member
Josh McClelland		X	Member, Deputy Chair
Edward Musz			Member
Kevin Walton	X		Member, Chair
Gregory Goldstein		X	Member
Lindsey Shaw			Ex officio member (DEP)
Bryan Bomer		X	Ex officio member (DPS)
Dan McHugh	(has retired as of 11/30)		Ex officio member (DHCA)
Michael Yambrach			Ex officio member (DGS)
Jim McGalliard		X	Member of the public
Henry Jordan		X	Member of the public
JP Reilly		X	Member of the public
Anonymous		X	Member of the public

Administrative items

Quorum present. Andrew Rivas moved to approve the minutes and Adam Landsman seconded the motion. The meeting notes from the 5/10 meeting were unanimously approved with Greg Goldstein abstaining.

BPIB members must complete travel/dependent care reimbursement forms to DEP by 6/2/23.

Maryland Department of Environment Draft Regulations for the Maryland BEPS

The Maryland Department of the Environment issued draft regulations for the Maryland BEPS program on 5/15; written comments are due 6/5/23. Several members noted that their companies or professional organizations are planning to submit comments on the draft regs to MDE. The Board confirmed that in their advisory capacity to DEP, they would like DEP to pass along discussion items and notes on behalf of the board to MDE as well.

The Board reviewed various elements of the MDE draft regulations:

- **Benchmarking Requirements**

Board members noted that there are no designations in the regulations for what qualifies someone to serve as a third-party data verifier and suggested that MDE adopt the same credentials used in Montgomery County.

Members also felt that it would be helpful if MDE and Montgomery County could somehow align the required verification periods. MD requires verification in 2026, 2031, 2036, 2041, and every 5 years thereafter. Montgomery County requires verification the first years that buildings are reported and every 3 years thereafter.

In the MDE regulations, benchmarkers are instructed to omit energy consumption data for separately metered food service facilities that engage in commercial cooking and water heating or to exclude it based on a standard deduction formula in accordance with the forthcoming technical guidance.

Members were curious why MDE opted to omit this end use for both GHG and EUI, and ~~wondered how noted that this~~ Montgomery County's benchmarking guidance does not have an EUI exemption for this end use.

- **Direct Emissions Targets**

MDE's direct emissions targets require that buildings meet targets by property type in 2030, 2035, and 2040.

Some members noted there is no carveout for multifamily gas cooking. There was concern that replacing gas cooking would be difficult and costly. A suggestion was made that this be included as an exemption, similar to commercial cooking. Alternatively, the suggestion was made that sufficient incentives need to be available to support the transition. It was also noted that the proposed regulation differentially affects multifamily tenants and homeowners while not impacting single family homes. Challenges to transitioning from gas cooking may include amperage/electrical service upgrades for each unit and that tenants often see electric cooking as a downgrade. The view was also shared that, unlike other technologies, electric cooking has zero payback.

With regard to another aspect of electrification in multifamily applications, a member noted that heat pump water heaters cannot always fit within existing unit retrofits in terms of their size, need for a heat source, or other specifications.

Members noted that multifamily dwellings tend to house lower income individuals compared to single-family homes. -Help should be provided to aid low-income families in making the transition, or ensuring that increased costs to landlords are offset and not passed through.

Another member recommends additional consideration be given to Common Ownership Communities (i.e., residential condominium and cooperative associations). Specifically, a recognition that the Association can only control the “Common Elements,” and cannot control the equipment and operations that pertain solely to the “Units.” Changes may be required to the Maryland Condominium Act allowing for the Association to mandate and/or assist with changes to the Units that may be needed to comply with this law.

Some members were also concerned about operating costs of electric equipment relative to gas as electricity is more expensive than gas on a per-unit basis today. However, other members noted that the cost of gas is projected to rise more than electricity as customers leave the grid, and therefore provide cost savings. An additional concern was noted, in that depending on how units are metered, switching from gas to electricity could switch the burden of utility payment from the landlord or central building onto the tenant unit.

- **Alternative Compliance Payments**

Per MD’s law, in lieu of meeting the net direct emissions standards, the building owner shall come into compliance with the net direct emissions standards by paying an alternative compliance fee for the greenhouse gas emissions in excess of the net direct emissions standards.

The Board discussed these compliance payments. Many members felt that the alternative compliance payments will be far less than the cost of doing a full electrification conversion. Members felt this was especially true in multifamily settings and other building types with large central systems where heat pump replacements and technology are not as clear-cut as unitized applications.

Members noted that these recurring payments can impact buildings’ valuation as they are factored into pro forma calculations, increase operating expenses, and reduce net operating income. A few members noted that commercial offices, in particular, are struggling with high vacancy rates as pre-Covid leases expire and tenants reevaluate their leasing needs. Securing financing is also becoming more difficult.

In general, members felt that significant incentives would need to be provided to reduce the costs of efficiency and electrification to compel owners to make these desired upgrades rather than complying via the alternative compliance payment.

Members also noted that Montgomery County’s law includes the provision of a Building Performance Improvement Plan (BPIP) for buildings that face circumstances outside of the owner’s control or economic infeasibility. These Plans require the owner to document and commit to cost-effective

upgrades, meaning that some beneficial projects are completed, even if the building does not fully achieve the performance standards. As such, some members suggested that the State consider such an alternative compliance pathway that would achieve some efficiency improvements/emissions reductions. This would allow owners, who might use the alternative compliance payment, to better align with the spirit of the legislation to reduce GHG emissions.

One member noted that MD's alternative compliance payment provides a clear path for owners to get into compliance, while Montgomery County's BPIP is still being developed and as yet is less of a clear assurance of compliance. However, the BPIP binds the building, via record the building performance improvement plan as a covenant in the County land records, to a set of measures.

- **Site EUI Targets**

MDE's regulations include interim site EUI standards in 2030 and 2035, calculated using a straight-line trajectory from a covered building's CY 2025 baseline performance, to the final performance standards in 2040. The Board noted that the MDE regulations are absent of any discussion on if or how site EUI targets are enforced or what, if any, alternative compliance options exist. If there is a generic civil penalty or other enforcement mechanism that MDE would plan to use for site EUI targets, these should be noted in the regulation.

The Board reviewed MDE's draft EUI targets. In particular, several members noted that the multifamily site EUI target of 29 stood out as being unrealistic. These members noted that they have never seen data for existing multifamily buildings benchmarking correctly that come close to reaching these targets. One member noted that the national average site EUI for multifamily buildings is 59.6. Among multifamily buildings in Montgomery County benchmarked by 5/24/2023, the median site EUI reported was 51.8. Since the target setting methodology outlined in MDE's video on the topic relied on 2019 statewide benchmarking data, members suggested that MDE revisit this target, either using benchmarking data reported in Montgomery County, or following the first statewide reporting in CY 2024 (reported in 2025).

One member also pointed out that the State's EUI target of 7 for self-storage facilities also seems unrealistic. That may reflect the low energy usage of drive-up, non-climate-controlled properties but would seem unrealistic for a multistory, climate-controlled facility.

In general, members felt that a more thorough technical overview of how the targets were arrived at would be useful.

Though MDE utilized the ZNC target setting methodology from Montgomery County's BEPS Technical Report, the Board had previously voiced varying opinions on which target setting methodology was most appropriate, as described in the Technical Report – the energy efficiency (EE), zero-net carbon compatible (ZNC), or EE-ZNC mid-point (mid-point).

Members' polling on the EUI targets from the BEPS Technical Report are outlined below:

Some members supported one EUI target across all building types, while others suggested that some exceptions should be made based on specific building types, as captured below:

- **EE**
 - No exceptions – 1 member

- **EE/ZNC Midpoint**
 - No exceptions – 5 members
 - With exceptions – 1 member
 - EE for multifamily and houses of worship, ZNC for County-owned building group types like courthouse, library, and public order and safety, and custom targets for laboratories and manufacturing/industrial facilities
- **ZNC**
 - No exceptions – 6 members
 - With exceptions – 2 members
 - EE for multifamily
 - EE/ZNC Midpoint for multifamily

In previous discussions, multifamily housing was most often identified as a challenging building type for setting EUI goals. For example, there are challenges for reaching an overall EUI in a building where the residents control their own energy use for heating and cooling. In situations where there is a central system, the cost of the upgrades to reduce energy use may be transferred to the individual renters and potentially challenge housing affordability. Members again expressed concerns about equity in applying BEPS to the multifamily sector. However, also noted were the available technologies to regulate energy use even in multifamily housing with individual controls, and that incentives need to be available such that the costs of meeting the EUI targets do not substantially adversely affect rent.

One member also expressed concerns that the ZNC target calculation methodology using COP and site EUI reduction potential based on the best-case or highest-efficiency electrification scenario of utilizing heat pumps and hot water heat pumps, when for some applications heat pumps may be difficult or impossible to install given space limitations and other technical constraints.

Next meeting

The BPIB plans to finalize the discussion on the Renewable Energy Allowance and discuss future meeting cadence of the Board.

- **Action Items**
 - Members should review the notes from the 5/24 meeting as DEP plans to provide this summary discussion of the draft MD regulations to MDE in advance of their June 5th comment deadline.

For additional information, please visit the Building Energy Performance Standards website at <https://www.montgomerycountymd.gov/green/energy/beps.html> or contact DEP at energy@montgomerycountymd.gov.