

**UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DOCKETING STATEMENT--CIVIL/AGENCY CASES**

Directions: Counsel must make a **docketing statement (civil/agency) filed** entry in CM/ECF within 14 days of docketing of the appeal, or within the due date set by the clerk's docketing notice, whichever is later. File with the entry the (1) docketing statement form with any extended answers and (2) any transcript order form. Parties proceeding pro se are not required to file a docketing statement. Opposing counsel who finds a docketing statement inaccurate or incomplete may file any objections within 10 days of service of the docketing statement using the ECF event-**docketing statement objection/correction filed**.

Appeal No. & Caption	20-1534 consolidated with 20-1473, Wheelabrator Baltimore, L.P. v. Mayor and City Council of Baltimore
Originating No. & Caption	1:19-cv-01264-GLR, Wheelabrator Baltimore, L.P. et al v. Mayor and City Council of Baltimore
Originating Court/Agency	United States District Court for the District of Maryland

Jurisdiction (answer any that apply)	
Statute establishing jurisdiction in Court of Appeals	28 U.S.C. § 1291
Time allowed for filing in Court of Appeals	30 days
Date of entry of order or judgment appealed	March 27, 2020
Date notice of appeal or petition for review filed	May 7, 2020
If cross appeal, date first appeal filed	April 22, 2020
Date of filing any post-judgment motion	N/A
Date order entered disposing of any post-judgment motion	N/A
Date of filing any motion to extend appeal period	N/A
Time for filing appeal extended to	N/A
Is appeal from final judgment or order?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If appeal is not from final judgment, why is order appealable?	

Settlement (The docketing statement is used by the circuit mediator in pre-briefing review and mediation conducted under Local Rule 33. Counsel may make a confidential request for mediation by calling the Office of the Circuit Mediator at 843-731-9099.)	
Is settlement being discussed?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Transcript (transcript order must be attached if transcript is needed and not yet on file)		
Is transcript needed for this appeal?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Has transcript been filed in district court?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is transcript order attached?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Case Handling Requirements (answer any that apply)		
Case number of any prior appeal in same case	N/A	
Case number of any pending appeal in same case	20-1473, Wheelabrator Baltimore, L.P. v. Mayor and City Council of Baltimore	
Identification of any case pending in this Court or Supreme Court raising similar issue	N/A	
	If abeyance or consolidation is warranted, counsel must file an appropriate motion.	
Is expedited disposition necessary?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	If yes, motion to expedite must be filed.	
Is oral argument necessary?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does case involve question of first impression?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does appeal challenge constitutionality of federal or state statute in case to which federal or state government is not a party	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	If yes, notice re: challenge to constitutionality of law must be filed.	

Nature of the Case (Nature of case and disposition below. Attach additional page if necessary.)
<p>Plaintiffs Wheelabrator Baltimore L.P. (“Wheelabrator”) and Curtis Bay Energy, L.P. (“Curtis Bay”) are solid waste waste-to-energy incineration facilities located in Baltimore City, Maryland. Wheelabrator receives non-hazardous municipal solid waste from homes and business in Baltimore City and surrounding counties and converts it into energy. Curtis Bay processes regulated medical waste generated in Baltimore City, the state of Maryland, and elsewhere. Both Wheelabrator and Curtis Bay are subject to extensive federal and state air pollution laws and regulations. Wheelabrator and Curtis Bay have Clean Air Act Title V operating permits issued by Maryland that contain emission limits and monitoring requirements reflecting these state and federal regulations. Plaintiffs Energy Recovery Council and National Waste & Recycling Association are non-profit trade associations that represent the interests of waste-to-energy and for-profit waste companies.</p>

Nature of the Case (continued)

In March 2019, the Mayor of Baltimore signed an Ordinance passed by the Baltimore City Council that contains emission limits and monitoring requirements for the Wheelabrator and Curtis Bay facilities that are far more stringent than the federal or state air regulations and the companies' Title V permits. The Ordinance also contains strict liability criminal penalties for violations.

In April 2019, Plaintiffs filed suit in the United States District Court for the District of Maryland alleging that the Baltimore City Ordinance was preempted by the federal and state laws, was ultra vires, and was a violation of Plaintiffs' federal and Maryland constitutional rights. The City moved to dismiss and the parties filed cross motions for summary judgment.

The District Court held that the City Ordinance was preempted by Maryland air pollution laws because it conflicts with state law by prohibiting – and in some cases, criminalizing – conduct that is permitted under the facilities' existing Title V permits, and second guesses the complex federal and state regulatory scheme for air emissions. The court dismissed Plaintiffs' ultra vires claim and other constitutional claims.

Issues (Non-binding statement of issues on appeal. Attach additional page if necessary)

Did the United States District Court for the District of Maryland err in holding that the Baltimore City Ordinance was preempted by Maryland air pollution laws?

Did the United States District Court for the District of Maryland err in dismissing Plaintiffs' ultra vires claim?

Adverse Parties (List adverse parties to this appeal and their attorneys; provide party's address if the party is not represented by counsel. Attach additional page if necessary.)

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Appellant (continued)			
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Signature: /s/ James B. Slaughter

Date: June 15, 2020

Counsel for: Wheelabrator Baltimore, L.P.; Energy Recovery Council; National Waste & Recycling Association

Certificate of Service (*required for parties served outside CM/ECF*): I certify that this document was served on _____ by personal delivery; mail; third-party commercial carrier; or email (with written consent) on the following persons at the addresses or email addresses shown:

Signature:	Date: