
By: Senators Frosh, Sfikas, Currie, Lawlah, Kelley, Dorman, Pinsky, Collins, Green, McFadden, and Van Hollen

Introduced and read first time: February 2, 1996

Assigned to: Economic and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Department of the Environment - Permits - Standing**

3 FOR the purpose of establishing certain standards for determining whether a person is
4 aggrieved under the provisions of law relating to contested case hearings on certain
5 permit decisions made by the Department of the Environment; providing for the
6 application of these standards; establishing certain requirements for the summary
7 disposition of certain requests for certain contested case hearings under certain
8 circumstances; establishing certain rights to appeal certain decisions by the
9 Department; establishing that certain persons are aggrieved for purposes of
10 bringing and maintaining an appeal under certain circumstances; establishing
11 certain procedures for an appeal; and generally relating to standing to challenge
12 certain permits issued by the Department of the Environment.

13 BY repealing and reenacting, with amendments,
14 Article - Environment
15 Section 1-601, 1-605, 1-606, and 5-204(a)(1) and (g)
16 Annotated Code of Maryland
17 (1993 Replacement Volume and 1995 Supplement)

18 BY adding to
19 Article - Environment
20 Section 1-607, 5-205, and 5-206
21 Annotated Code of Maryland
22 (1993 Replacement Volume and 1995 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
24 MARYLAND, That the Laws of Maryland read as follows:

25 **Article - Environment**

26 1-601.

27 (a) Permits issued by the Department under the following sections shall be issued
28 in accordance with this subtitle:

29 (1) Air quality control permits to construct subject to § 2-404 of this article;

2

1 (2) Permits to install, materially alter or materially extend landfill systems,
2 incinerators for public use or rubble landfills subject to § 9-209 of this article;

3 (3) Permits to discharge pollutants to waters of the State issued pursuant to
4 § 9-323 of this article;

5 (4) Permits to install, materially alter or materially extend a structure used
6 for storage or distribution of any type of sewage sludge issued, renewed, or amended
7 pursuant to § 9-234.1 or § 9-238 of this article;

8 (5) Permits to own, operate, establish or maintain a controlled hazardous
9 substance facility issued pursuant to § 7-232 of this article;

10 (6) Permits to own, operate, or maintain a hazardous material facility issued
11 pursuant to § 7-103 of this article; and

12 (7) Permits to own, operate, establish or maintain a low-level nuclear waste
13 facility issued pursuant to § 7-233 of this article.

14 (b) Notwithstanding any other provision of law to the contrary, the Department is
15 not required to provide an opportunity for a contested case hearing to any party other
16 than the applicant in connection with any permit issued pursuant to this article except
17 [the]:

18 (1) THE permits listed in subsection (a) of this section; AND

19 (2) THE PERMITS ISSUED UNDER TITLE 5, SUBTITLES 5 AND 9 AND
20 TITLES 1, 15, AND 16 OF THIS ARTICLE.

21 (c) When this article requires more than one public informational meeting, public
22 hearing, or contested case hearing, the Department may consolidate some or all of the
23 meetings or hearings for the proposed facility with similar meetings or hearings.

24 1-605.

25 (A) IN ADDITION TO THE PERMITS SET FORTH IN § 1-601 (A) OF THIS SUBTITLE,
26 THIS SECTION APPLIES TO AN OPERATING PERMIT UNDER A STATE DELEGATED
27 PROGRAM SUBJECT TO TITLE V OF THE FEDERAL CLEAN AIR ACT.

28 [(a)] (B) (1) A person may request a contested case hearing to appeal a final
29 determination if the person makes factual allegations with sufficient particularity to
30 demonstrate that:

31 [(1)] (I) The person is aggrieved by the final determination; and

32 [(2)] (II) The final determination is:

33 [(i)] 1. Legally inconsistent with any provisions of law applicable to
34 the final determination being challenged; or

35 [(ii)] 2. Based upon an incorrect determination of a relevant and
36 material fact.

37 (2) FOR PURPOSES OF PARAGRAPH (1) OF THIS SUBSECTION, A PERSON
38 IS AGGRIEVED UNDER THE FOLLOWING CIRCUMSTANCES:

3

1 (I) AN APPLICANT IS AGGRIEVED WHENEVER A FINAL
2 DETERMINATION DENIES THE APPLICANT'S REQUEST FOR A PERMIT OR ISSUES THE
3 PERMIT SUBJECT TO CONDITIONS;

4 (II) A GOVERNMENTAL ENTITY IS AGGRIEVED WHENEVER A
5 RESIDENT OF THE GOVERNMENTAL ENTITY IS AGGRIEVED;

6 (III) A NOT FOR PROFIT ORGANIZATION IS AGGRIEVED WHENEVER
7 ANY BONA FIDE MEMBER OF THE ORGANIZATION IS AGGRIEVED; AND

8 (IV) ANY OTHER PERSON IS AGGRIEVED IF:

9 1. THE GRANTING OF THE PERMIT IN ACCORDANCE WITH
10 THE FINAL DETERMINATION:

11 A. WOULD BE INJURIOUS TO THE REQUESTOR'S HEALTH OR
12 PROPERTY; OR

13 B. WOULD BE INJURIOUS TO PLANT OR ANIMAL LIFE ON OR
14 NEAR, BUT NO FURTHER THAN 1.5 MILES FROM, THE REQUESTOR'S PROPERTY; AND

15 2. THE INJURED INTEREST IS WITHIN THE SCOPE OF
16 INTERESTS PROTECTED BY ANY PROVISIONS OF LAW APPLICABLE TO THE PERMIT
17 BEING CHALLENGED.

18 [(b)] (C) A party requesting a contested case hearing shall submit awritten
19 request for adjudication within 15 days after publication of a notice of final
20 determination.

21 [(c)] (D) The request for adjudication shall set forth the basis forthe request with
22 sufficient particularity to assure that the issues to be raised are within the scope of
23 subsection (a) of this section and that the person is aggrieved by the final determination.

24 [(d)] (E) A party may not, in a contested case hearing, challenge a facility's
25 compliance with zoning and land use requirements or conformity with a county plan
26 issued under Title 9, Subtitle 5 of this article. However, nothing in this subtitle shall
27 prevent a party from challenging whether the Department has complied with §§
28 2-404(b)(2)(ii) and 9-210(a)(3) of this article, when applicable, nor does this subtitle
29 prevent a party from contesting the compliance of the facility with zoning and land use or
30 county plan requirements in any proceeding brought in accordance with and under any
31 applicable local laws.

32 [(e)] (F) A contested case hearing shall be conducted in accordance with Subtitle
33 2 of Title 10 of the State Government Article.

34 1-606.

35 (a) (1) If a request for a hearing is so vague or ambiguous that theDepartment
36 or the official conducting the hearing cannot reasonably determine whether specific
37 allegations on any issue have been made in compliance with § 1-605 of this subtitle, the
38 Department or the official may require the person making the request tofile a more
39 definite statement with specific allegations within 15 days.

4

1 (2) If a more definite statement is not made within 15 days, the Department
2 or the official conducting the hearing may strike the request or any part of the request.

3 (b) (1) The request for adjudication shall be reviewed by the Department, and a
4 determination shall be made whether the person making the request is entitled to a
5 contested case hearing under applicable law on all or any part of the allegations made in
6 the request.

7 (2) The Department shall dismiss all or any part of a request for a contested
8 case hearing if the Department determines that the person is not entitled to a contested
9 case hearing under applicable law on all or part of the allegations made in the request.

10 (c) In addition to the provisions set forth in subsection (b) of this section and at
11 the request of any party, including the Department, the administrative law judge shall
12 dismiss all or any part of a request for a contested case hearing if the administrative law
13 judge determines that the person making the request has failed to make the
14 demonstration required by § 1-605 of this subtitle, including the failure to make factual
15 allegations with sufficient particularity to demonstrate that the person is aggrieved by the
16 final determination.

17 (D) (1) ON REQUEST BY THE DEPARTMENT OR ANY OTHER PARTY TO A
18 CONTESTED CASE, THE ADMINISTRATIVE LAW JUDGE SHALL ORDER A PARTY WHO
19 REQUESTED A CONTESTED CASE HEARING TO PROVIDE COMPETENT AND
20 MATERIAL EVIDENCE THAT THE PARTY IS AGGRIEVED AS ALLEGED IN THEIR
21 REQUEST AND IN ACCORDANCE WITH § 1-605(B) OF THIS SUBTITLE.

22 (2) IF ANY PARTY IS NOT ABLE TO PROVIDE COMPETENT AND
23 MATERIAL EVIDENCE IN RESPONSE TO SUCH AN ORDER, THE ADMINISTRATIVE LAW
24 JUDGE SHALL MAKE A SUMMARY DISPOSITION DISMISSING THE REQUEST OF THAT
25 PARTY AND EXCLUDING THAT PARTY FROM FURTHER PARTICIPATION AS A PARTY
26 IN THE CONTESTED CASE HEARING.

27 (3) IF ALL PARTIES THAT MADE REQUESTS FOR CONTESTED CASE
28 HEARINGS IN ACCORDANCE WITH § 1-605(B) OF THIS SUBTITLE ARE DISMISSED, THE
29 ADMINISTRATIVE LAW JUDGE SHALL ISSUE A SUMMARY DISPOSITION UPHOLDING
30 THE FINAL DETERMINATION OF THE DEPARTMENT.

31 [(d)] (E) (1) Any party to a contested case hearing, including the Department,
32 may file at any time a motion for a summary decision on all or part of an action on the
33 ground that there is no genuine dispute as to any material fact and that the party is
34 entitled to a decision as a matter of law.

35 (2) The motion, any response and the decision of the administrative law
36 judge or other official conducting the hearing shall comply with the requirements of
37 Maryland Rule of Civil Procedure 2-501.

38 [(e)] (F) (1) When a summary disposition under any of the provisions of this
39 section does not dispose of the entire action and a contested case hearing is necessary, the
40 Department official or administrative law judge issuing the summary disposition, on the
41 basis of the request and any other pleadings and, if necessary, after interrogating counsel
42 on the record, may enter an order specifying the issues or facts that are not in genuine
43 dispute.

5

1 (2) The order controls the subsequent course of the action but may be
2 modified by the Department official or the administrative law judge to prevent manifest
3 injustice.

4 [(f)] (G) Except as provided in subsection [(g)] (H) of this section, an order or
5 other form of summary disposition under this section, however designated, that
6 adjudicates fewer than all of the issues in an action, or that adjudicates issues concerning
7 fewer than all of the parties to the action:

8 (1) Is not a final decision of the Department or the administrative law judge;

9 (2) Does not terminate the action as to any issues or any of the parties; and

10 (3) Is subject to revision at any time before the entry of a final decision by
11 the Department that adjudicates all of the issues raised by or against all of the parties.

12 [(g)] (H) (1) If the official making a summary disposition under this section
13 determines in a written order that there is no just reason for delay, he may direct in the
14 order the entry of a decision as to one or more but fewer than all of the issues or parties.

15 (2) A decision entered pursuant to this subsection shall be appealable in the
16 same manner as a decision by the Department official or administrative law judge after a
17 contested case hearing.

18 1-607.

19 (A) IN ADDITION TO THE PERMITS SET FORTH IN § 1-601 (A) OF THIS SUBTITLE,
20 THIS SECTION APPLIES TO AN OPERATING PERMIT UNDER A STATE DELEGATED
21 PROGRAM SUBJECT TO TITLE V OF THE FEDERAL CLEAN AIR ACT.

22 (B) IN ADDITION TO ANY RIGHT TO JUDICIAL REVIEW PROVIDED BY THIS
23 ARTICLE OR ANY OTHER PROVISION OF LAW, A PERSON MAY APPEAL A FINAL
24 DECISION BY THE DEPARTMENT TO GRANT A PERMIT IF THE APPEAL IS FILED IN
25 ACCORDANCE WITH THIS SECTION.

26 (C) THE FOLLOWING PERSONS ARE AGGRIEVED FOR PURPOSES OF BRINGING
27 AND MAINTAINING AN APPEAL IN ACCORDANCE WITH THIS SECTION:

28 (1) THE STATE, OR ANY AGENCY OR OFFICE OF THE STATE ACTING
29 THROUGH THE ATTORNEY GENERAL;

30 (2) ANY POLITICAL SUBDIVISION OF THE STATE, OR ANY AGENCY OR
31 OFFICIAL ACTING ON ITS BEHALF;

32 (3) A NOT FOR PROFIT ORGANIZATION IF ANY BONA FIDE MEMBER OF
33 THE ORGANIZATION WOULD HAVE STANDING UNDER THIS SECTION; AND

34 (4) ANY OTHER PERSON IS AGGRIEVED IF:

35 (I) THE GRANTING OF THE PERMIT IN ACCORDANCE WITH THE
36 FINAL DETERMINATION:

37 1. WOULD BE INJURIOUS TO THE REQUESTOR'S HEALTH OR
38 PROPERTY; OR

1 2. WOULD BE INJURIOUS TO PLANT OR ANIMAL LIFE ON OR
2 NEAR, BUT NO FURTHER THAN 1.5 MILES FROM, THE REQUESTOR'S PROPERTY; AND

3 (II) THE INJURED INTEREST IS WITHIN THE SCOPE OF INTERESTS
4 PROTECTED BY ANY PROVISIONS OF LAW APPLICABLE TO THE PERMIT BEING
5 CHALLENGED.

6 (D) AN APPEAL FILED IN ACCORDANCE WITH THIS SECTION IS LIMITED TO
7 THE RECORD ESTABLISHED UNDER §§ 1-604 AND 1-605 OF THIS SUBTITLE AND §
8 10-222(F) OF THE STATE GOVERNMENT ARTICLE.

9 (E) AN APPEAL FILED UNDER THIS SECTION SHALL BE FILED AND DECIDED
10 IN ACCORDANCE WITH § 10-222 OF THE STATE GOVERNMENT ARTICLE AS IF THE
11 APPEAL WAS MADE FROM A FINAL DECISION IN A CONTESTED CASE.

12 (F) (1) WITHIN 10 DAYS AFTER RECEIPT OF AN APPEAL, THE DEPARTMENT
13 SHALL PREPARE THE RECORD WHICH SHALL CONSIST OF ALL MATERIALS UPON
14 WHICH THE DEPARTMENT RELIED IN MAKING THE FINAL DECISION AND ALL
15 WRITTEN OR TRANSCRIBED PUBLIC COMMENTS MADE TO THE DEPARTMENT
16 DURING ANY PERIOD FOR PUBLIC COMMENT.

17 (2) INSTEAD OF MAKING COPIES OF MATERIALS TO PLACE IN THE
18 RECORD, THE DEPARTMENT MAY LIST MATERIALS UPON WHICH IT RELIED IF THE
19 MATERIALS ARE MADE AVAILABLE TO THE PARTY FILING THE APPEAL.

20 (G) ANY PARTY TO THE APPEAL MAY SEEK PERMISSION TO SUPPLEMENT THE
21 RECORD AS PROVIDED IN § 10-222(F) OF THE STATE GOVERNMENT ARTICLE.

22 5-204.

23 (a) (1) (I) It is the intent of the General Assembly to establish consolidated
24 procedures and notice and hearing requirements for Title 5, Subtitles 5 and 9 and Titles
25 14, 15, and 16 of this article in order to ensure efficient review and consistent decision
26 making.

27 (II) THE PROVISIONS OF THIS SECTION AND OF §§ 5-205 AND 5-206
28 OF THIS SUBTITLE SHALL APPLY TO ANY PERMIT ISSUED BY THE DEPARTMENT
29 UNDER TITLE 5, SUBTITLES 5 AND 9 AND TITLES 14, 15, AND 16.

30 (g) (1) Upon written request the Department shall grant a contested case
31 hearing if it determines that:

32 [(1)] (I) The requester [has a specific right, duty, privilege, or interest
33 which is or may be adversely affected by the permit determination or license decision and
34 which is different from that held by the general public] IS AGGRIEVED BY THE FINAL
35 DETERMINATION;

36 [(2)] (II) The requester raises adjudicable issues which are within the scope
37 of the permit authority; and

38 [(3)] (III) The request is timely.

39 (2) FOR PURPOSES OF PARAGRAPH (1) (I) OF THIS SUBSECTION, A
40 PERSON IS AGGRIEVED UNDER THE FOLLOWING CIRCUMSTANCES:

7

1 (I) AN APPLICANT IS AGGRIEVED WHENEVER A FINAL
2 DETERMINATION DENIES THE APPLICANT'S REQUEST FOR A PERMIT OR ISSUES THE
3 PERMIT SUBJECT TO CONDITIONS;

4 (II) A GOVERNMENTAL ENTITY IS AGGRIEVED WHENEVER A
5 RESIDENT OF THE GOVERNMENTAL ENTITY IS AGGRIEVED;

6 (III) A NOT FOR PROFIT ORGANIZATION IS AGGRIEVED WHENEVER
7 ANY BONA FIDE MEMBER OF THE ORGANIZATION IS AGGRIEVED; AND

8 (IV) ANY OTHER PERSON IS AGGRIEVED IF:

9 1. THE GRANTING OF THE PERMIT IN ACCORDANCE WITH
10 THE FINAL DETERMINATION:

11 A. WOULD BE INJURIOUS TO THE REQUESTOR'S HEALTH OR
12 PROPERTY; OR

13 B. WOULD BE INJURIOUS TO PLANT OR ANIMAL LIFE ON OR
14 NEAR, BUT NO FURTHER THAN 1.5 MILES FROM, THE REQUESTOR'S PROPERTY; AND

15 2. THE INJURED INTEREST IS WITHIN THE SCOPE OF
16 INTERESTS PROTECTED BY ANY PROVISIONS OF LAW APPLICABLE TO THE PERMIT
17 BEING CHALLENGED.

18 5-205.

19 (A) ON REQUEST BY THE DEPARTMENT OR ANY OTHER PARTY TO A
20 CONTESTED CASE, THE ADMINISTRATIVE LAW JUDGE SHALL ORDER A PARTY WHO
21 REQUESTED A CONTESTED CASE HEARING TO PROVIDE COMPETENT AND
22 MATERIAL EVIDENCE THAT THE PARTY IS AGGRIEVED AS ALLEGED IN THEIR
23 REQUEST AND IN ACCORDANCE WITH § 5-204 (G) OF THIS SUBTITLE.

24 (B) IF ANY PARTY IS NOT ABLE TO PROVIDE COMPETENT AND MATERIAL
25 EVIDENCE IN RESPONSE TO SUCH AN ORDER, THE ADMINISTRATIVE LAW JUDGE
26 SHALL MAKE A SUMMARY DISPOSITION DISMISSING THE REQUEST OF THAT PARTY
27 AND EXCLUDING THAT PARTY FROM FURTHER PARTICIPATION AS A PARTY IN THE
28 CONTESTED CASE HEARING.

29 (C) IF ALL PARTIES WHICH MADE REQUESTS FOR CONTESTED CASE
30 HEARINGS IN ACCORDANCE WITH § 5-204 OF THIS SUBTITLE ARE DISMISSED, THE
31 ADMINISTRATIVE LAW JUDGE SHALL ISSUE A SUMMARY DISPOSITION UPHOLDING
32 THE FINAL DETERMINATION OF THE DEPARTMENT.

33 5-206.

34 (A) IN ADDITION TO ANY RIGHT TO JUDICIAL REVIEW PROVIDED BY THIS
35 ARTICLE OR ANY OTHER PROVISION OF LAW, A PERSON MAY APPEAL A FINAL
36 DECISION BY THE DEPARTMENT TO GRANT A PERMIT IF THE APPEAL IS FILED IN
37 ACCORDANCE WITH THIS SECTION.

38 (B) THE FOLLOWING PERSONS ARE AGGRIEVED FOR PURPOSES OF BRINGING
39 AND MAINTAINING AN APPEAL IN ACCORDANCE WITH THIS SECTION:

8

1 (1) THE STATE, OR ANY AGENCY OR OFFICE OF THE STATE ACTING
2 THROUGH THE ATTORNEY GENERAL;

3 (2) ANY POLITICAL SUBDIVISION OF THE STATE, OR ANY AGENCY OR
4 OFFICIAL ACTING ON ITS BEHALF;

5 (3) A NOT FOR PROFIT ORGANIZATION IF ANY BONA FIDE MEMBER OF
6 THE ORGANIZATION WOULD HAVE STANDING UNDER THIS SECTION; AND

7 (4) ANY OTHER PERSON IS AGGRIEVED IF:

8 (I) THE GRANTING OF THE PERMIT IN ACCORDANCE WITH THE
9 FINAL DETERMINATION:

10 1. WOULD BE INJURIOUS TO THE REQUESTOR'S HEALTH OR
11 PROPERTY; OR

12 2. WOULD BE INJURIOUS TO PLANT OR ANIMAL LIFE ON OR
13 NEAR, BUT NO FURTHER THAN 1.5 MILES FROM, THE REQUESTOR'S PROPERTY; AND

14 (II) THE INJURED INTEREST IS WITHIN THE SCOPE OF INTERESTS
15 PROTECTED BY ANY PROVISIONS OF LAW APPLICABLE TO THE PERMIT BEING
16 CHALLENGED.

17 (C) AN APPEAL FILED IN ACCORDANCE WITH THIS SECTION IS LIMITED TO
18 THE RECORD ESTABLISHED UNDER § 5-205 OF THIS SUBTITLE AND § 10-222(F) OF THE
19 STATE GOVERNMENT ARTICLE.

20 (D) AN APPEAL FILED UNDER THIS SECTION SHALL BE FILED AND DECIDED
21 IN ACCORDANCE WITH § 10-222(F) OF THE STATE GOVERNMENT ARTICLE AS IF THE
22 APPEAL WAS MADE FROM A FINAL DECISION IN A CONTESTED CASE.

23 (E) (1) WITHIN 10 DAYS AFTER RECEIPT OF AN APPEAL, THE DEPARTMENT
24 SHALL PREPARE THE RECORD WHICH SHALL CONSIST OF ALL MATERIALS UPON
25 WHICH THE DEPARTMENT RELIED IN MAKING THE FINAL DECISION AND ALL
26 WRITTEN OR TRANSCRIBED PUBLIC COMMENTS MADE TO THE DEPARTMENT
27 DURING ANY PERIOD FOR PUBLIC COMMENT.

28 (2) INSTEAD OF MAKING COPIES OF MATERIALS TO PLACE IN THE
29 RECORD, THE DEPARTMENT MAY LIST MATERIALS UPON WHICH IT RELIED IF THE
30 MATERIALS ARE MADE AVAILABLE TO THE PARTY FILING THE APPEAL.

31 (F) ANY PARTY TO THE APPEAL MAY SEEK PERMISSION TO SUPPLEMENT THE
32 RECORD AS PROVIDED IN § 10-222(F) OF THE STATE GOVERNMENT ARTICLE.

33 SECTION 2. AND BE IT FURTHER ENACTED, That the provisions set forth
34 in §§ 1-605(b), 1-607, and 5-206 of the Environment Article and the changes to §
35 5-204(g) of the Environment Article shall apply only to final permit decisions made on or
36 after the date of enactment of this Act.

37 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
38 October 1, 1996.