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By: **Delegate Hubbard**

Introduced and read first time: January 13, 2005

Assigned to: Environmental Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Environment - Air Quality - New Source Review**

3 FOR the purpose of prohibiting the Department of the Environment from altering  
4 certain regulations that existed on a certain date related to the review of a new  
5 source that may cause or control emissions into the air unless certain conditions  
6 are met; providing for the application of this Act; and generally relating to the  
7 new source review regulations.

8 BY repealing and reenacting, with amendments,  
9 Article - Environment  
10 Section 2-401  
11 Annotated Code of Maryland  
12 (1996 Replacement Volume and 2004 Supplement)

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

15 **Article - Environment**

16 2-401.

17 (A) Except as provided in SUBSECTIONS (B) THROUGH (D) OF THIS SECTION  
18 AND § 2-402 of this subtitle, the Department may adopt regulations that require a  
19 permit or registration before a person constructs, modifies, operates, or uses a source  
20 that may cause or control emissions into the air.

21 (B) EXCEPT AS PROVIDED IN SUBSECTIONS (C) AND (D) OF THIS SECTION, IN  
22 AMENDING OR REVISING ITS NEW SOURCE REVIEW REGULATIONS, THE  
23 DEPARTMENT MAY NOT ALTER ANY OF THE FOLLOWING IF THEY EXISTED IN  
24 REGULATION ON DECEMBER 30, 2002:

25 (1) THE APPLICABILITY DETERMINATION FOR NEW SOURCE REVIEW;

26 (2) THE DEFINITION OF MODIFICATION, MAJOR MODIFICATION,  
27 ROUTINE MAINTENANCE, REPAIR, OR REPLACEMENT;

1 (3) THE CALCULATION METHODOLOGY, THRESHOLDS, OR OTHER  
2 PROCEDURES OF NEW SOURCE REVIEW; AND

3 (4) ANY OTHER REQUIREMENT OR DEFINITION OF THE NEW SOURCE  
4 REVIEW REGULATIONS.

5 (C) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, THE  
6 DEPARTMENT MAY ALTER AN ITEM SET FORTH IN SUBSECTION (B) OF THIS SECTION  
7 IF THE AMENDMENT OR REVISION DOES NOT EXEMPT, RELAX, OR REDUCE ANY  
8 REQUIREMENT RELATED TO:

9 (1) OBTAINING NEW SOURCE REVIEW OR OTHER PERMITS TO  
10 CONSTRUCT, BEFORE BEGINNING CONSTRUCTION;

11 (2) USING BEST CONTROL TECHNOLOGY;

12 (3) CONDUCTING AN AIR QUALITY IMPACT ANALYSIS;

13 (4) CONDUCTING RECORDKEEPING, MONITORING, AND REPORTING, IF  
14 THE AMENDMENT OR REVISION WOULD MAKE THE RECORDKEEPING, MONITORING,  
15 OR REPORTING LESS REPRESENTATIVE, ENFORCEABLE, OR PUBLICLY ACCESSIBLE;

16 (5) REGULATING ANY AIR POLLUTANT COVERED BY THE NEW SOURCE  
17 REVIEW REGULATIONS; AND

18 (6) PUBLIC PARTICIPATION, INCLUDING A PUBLIC COMMENT PERIOD,  
19 PUBLIC NOTIFICATION, PUBLIC HEARING, OR OTHER OPPORTUNITIES OR FORMS OF  
20 PUBLIC PARTICIPATION, PRIOR TO ISSUANCE OF A PERMIT TO CONSTRUCT.

21 (D) THE DEPARTMENT MAY ALTER A REGULATION SET FORTH IN SUBSECTION  
22 (B) OF THIS SECTION THAT EXEMPTS OR REDUCES A REQUIREMENT LISTED IN  
23 SUBSECTION (C) OF THIS SECTION IF:

24 (1) THE DEPARTMENT MAKES ITS DECISION TO AMEND OR REVISE THE  
25 REGULATION BASED ON SUBSTANTIAL EVIDENCE IN THE RECORD THAT THE NEW  
26 REGULATION:

27 (I) REPLACES AN EXISTING REGULATION THAT CAUSED A RISK TO  
28 PUBLIC HEALTH OR SAFETY FROM EXPOSURE TO A TOXIC MATERIAL, A DANGEROUS  
29 CONDITION, OR AN INFECTIOUS DISEASE WITH A REGULATION THAT PROVIDES  
30 GREATER PROTECTION TO PUBLIC HEALTH OR SAFETY;

31 (II) REPLACES AN EXISTING REGULATION THAT HAS BEEN FOUND  
32 TO BE UNWORKABLE DUE TO ENGINEERING OR OTHER TECHNICAL PROBLEMS WITH  
33 A WORKABLE REGULATION;

34 (III) AMENDS AN EXISTING REGULATION THAT OTHERWISE WILL  
35 CAUSE SUBSTANTIAL HARDSHIP TO A BUSINESS, INDUSTRY, OR CATEGORY OF  
36 SOURCES, IF ALL OF THE FOLLOWING CRITERIA ARE MET:

1                                   1.        THE AMENDMENT IS NARROWLY TAILORED TO RELIEVE  
2 THE IDENTIFIED HARDSHIP;

3                                   2.        THE DEPARTMENT PROVIDES FOR EQUIVALENT  
4 REDUCTIONS IN EMISSIONS OF AIR CONTAMINANTS TO OFFSET ANY INCREASE IN  
5 EMISSIONS OF AIR CONTAMINANTS;

6                                   3.        ALL REDUCTIONS IN EMISSIONS OF AIR CONTAMINANTS  
7 ARE REAL, SURPLUS, QUANTIFIABLE, VERIFIABLE, ENFORCEABLE, AND OCCUR NOT  
8 MORE THAN 3 YEARS BEFORE, AND NOT MORE THAN 3 YEARS AFTER, THE  
9 OCCURRENCE OF THE INCREASE IN EMISSIONS OF AIR CONTAMINANTS; AND

10                                  4.        INFORMATION REGARDING THE REDUCTIONS IN  
11 EMISSIONS OF AIR CONTAMINANTS IS AVAILABLE TO THE PUBLIC;

12                                  (IV)    1.        IS A TEMPORARY REGULATION NECESSARY TO RESPOND  
13 TO AN EMERGENCY CONSISTING OF A SUDDEN, UNEXPECTED OCCURRENCE AND  
14 DEMANDING PROMPT ACTION TO PREVENT OR MITIGATE LOSS OF OR DAMAGE TO  
15 LIFE, HEALTH, PROPERTY, OR ESSENTIAL SERVICES; AND

16                                  2.        THE TEMPORARY REGULATION DOES NOT EXTEND  
17 BEYOND THE REASONABLY ANTICIPATED DURATION OF THE EMERGENCY; OR

18                                  (V)     WILL NOT IMPAIR OR IMPEDE CONTINUED MAINTENANCE OF  
19 ALL NATIONAL AMBIENT AIR QUALITY STANDARDS OR PROGRESS TOWARD  
20 ACHIEVING ATTAINMENT OF THOSE STANDARDS; AND

21                                  (2)     THE AMENDED OR REVISED REGULATION WILL NOT EXEMPT OR  
22 REDUCE THE OBLIGATION OF ANY STATIONARY SOURCE THAT CONSTITUTED A  
23 MAJOR SOURCE UNDER THE REGULATIONS THAT EXISTED ON DECEMBER 30, 2002,  
24 TO OBTAIN A PERMIT OR TO MEET BEST AVAILABLE CONTROL TECHNOLOGY  
25 REQUIREMENTS.

26        (E)     NOTHING IN THIS SECTION SHALL BE INTERPRETED TO AFFECT THE  
27 DEPARTMENT'S AUTHORITY TO MAKE A NECESSARY CHANGE TO A REQUIREMENT OR  
28 CONDITION CONTAINED WITHIN A CONSTRUCTION PERMIT THAT WAS ISSUED  
29 BEFORE OCTOBER 1, 2005, BUT ONLY IF THE DEPARTMENT DETERMINES THAT THE  
30 CHANGE WILL NOT EXEMPT OR REDUCE A REQUIREMENT LISTED IN SUBSECTION (C)  
31 OF THIS SECTION.

32        SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
33 October 1, 2005.