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Assigned to: Economic Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 29, 2006

CHAPTER _____

1 AN ACT concerning

2 **Healthy Air Act**

3 FOR the purpose of ~~establishing certain limits on the emissions~~ prohibiting affected
4 facilities collectively from emitting more than certain amounts per year of
5 oxides of nitrogen, sulfur dioxide, and mercury, and carbon dioxide from certain
6 facilities by on or after certain dates; authorizing the Department of the
7 Environment to set a certain interim stage of sulfur dioxide emissions
8 reductions; requiring the Department of the Environment to set certain
9 emissions budgets; authorizing an affected facility to exceed certain budgets
10 under certain circumstances; requiring the Governor to include the State in the
11 Regional Greenhouse Gas Initiative or, the alternative, requiring the
12 Department to adopt certain regulations to reduce carbon dioxide emissions
13 from affected facilities; providing for the withdrawal of the State from the
14 Regional Greenhouse Gas Initiative after a certain date; encouraging the State
15 to join a successor organization if the Regional Greenhouse Gas Initiative
16 expires; requiring the Governor to report to the General Assembly under certain
17 circumstances; providing for the application of this Act; authorizing affected
18 facilities to determine the best method of compliance with requirements of this

1 Act; authorizing the Department to reduce or waive certain penalties under
 2 certain circumstances; providing for judicial review of certain decisions under
 3 certain circumstances; requiring the Department to treat certain allowances
 4 allocated by the U.S. Environmental Protection Agency to the State in a certain
 5 manner; requiring certain facilities to submit, to the Department, the
 6 Department of Natural Resources, and the Public Service Commission, a certain
 7 compliance report by a certain date; requiring the Department to review certain
 8 information received in accordance with this Act; requiring the Department to
 9 adopt certain regulations; providing for certain administrative and civil
 10 penalties for certain violations; providing for criminal and civil penalties for a
 11 violation establishing certain allowance penalties for certain violations of this
 12 Act; requiring the Department to allow a certain affected facility to operate
 13 without complying with the requirements of this Act under certain
 14 circumstances; prohibiting a certain affected facility from operating above
 15 certain emissions levels; requiring the Department to review the operations of
 16 an affected facility and establish a certain requirement by regulation under
 17 certain circumstances; establishing a Maryland Carbon Reduction Fund in the
 18 Maryland Energy Administration; providing for the operation and maintenance
 19 of the Fund; providing that the Fund consists of certain fines and penalties,
 20 certain proceeds, and certain other money; defining certain terms; requiring the
 21 Department to enter into a certain contract to conduct a certain study; requiring
 22 the Department to make a certain report on or before a certain date; and
 23 generally relating to the emissions of four pollutants from power plants.

24 BY adding to
 25 Article - Environment
 26 Section 2-1001 through 2-1005, inclusive, to be under the new subtitle "Subtitle
 27 10. Healthy Air Act"
 28 Annotated Code of Maryland
 29 (1996 Replacement Volume and 2005 Supplement)

30 ~~BY adding to~~
 31 ~~Article - State Government~~
 32 ~~Section 9-2009~~
 33 ~~Annotated Code of Maryland~~
 34 ~~(2004 Replacement Volume and 2005 Supplement)~~

35 BY repealing and reenacting, with amendments,
 36 Article - Public Utility Companies
 37 Section 7-206
 38 Annotated Code of Maryland
 39 (1998 Replacement Volume and 2005 Supplement)

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

1 Article - Environment

2 SUBTITLE 10. HEALTHY AIR ACT.

3 ~~2-1001.~~4 (A) ~~IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS~~
5 ~~INDICATED.~~6 (B) (1) ~~"AFFECTED FACILITY" MEANS AN ELECTRICITY GENERATING UNIT~~
7 ~~IN THE STATE THAT INCLUDES A FOSSIL FUEL FIRED BOILER OR INDIRECT HEAT~~
8 ~~EXCHANGER THAT WAS EXEMPTED FROM THE PREVENTION OF SIGNIFICANT~~
9 ~~DETERIORATION REVIEW UNDER TITLE 1 OF THE 1977 FEDERAL CLEAN AIR ACT.~~10 (2) ~~"AFFECTED FACILITY" INCLUDES:~~11 (I) ~~H.A. WAGNER, UNITS 2 AND 3;~~12 (II) ~~R.P. SMITH, UNITS 3 AND 4;~~13 (III) ~~MORGANTOWN GENERATING STATION, UNITS 1 AND 2;~~14 (IV) ~~DICKERSON, UNITS 1, 2, AND 3;~~15 (V) ~~C.P. CRANE, UNITS 1 AND 2;~~16 (VI) ~~CHALK POINT GENERATING STATION, UNITS 1 AND 2; AND~~17 (VII) ~~BRANDON SHORES, UNITS 1 AND 2.~~18 (3) ~~"AFFECTED FACILITY" DOES NOT INCLUDE ANY ELECTRICITY~~
19 ~~GENERATING UNIT:~~20 (I) ~~THAT OPERATES IN COMBINATION WITH EQUIPMENT USED TO~~
21 ~~RECOVER USEFUL THERMAL ENERGY FOR INDUSTRIAL, COMMERCIAL, HEATING, OR~~
22 ~~COOLING PURPOSES THROUGH SEQUENTIAL USE OF ENERGY; OR~~23 (II) ~~THAT SUPPLIES IN ANY CALENDAR YEAR LESS THAN~~
24 ~~ONE HALF OF THE ELECTRICITY GENERATED BY SUCH UNIT TO ANY UTILITY POWER~~
25 ~~DISTRIBUTION SYSTEM FOR SALE.~~26 (C) ~~"INLET MERCURY" MEANS THE AVERAGE CONCENTRATION OF MERCURY~~
27 ~~IN FLUE GAS AT THE INLET OF THE EMISSION CONTROL DEVICE IMMEDIATELY~~
28 ~~DOWNSTREAM OF THE BOILER OF AN ELECTRICITY GENERATING UNIT, AS~~
29 ~~DETERMINED BY METHODS PRESCRIBED BY THE DEPARTMENT.~~30 (D) ~~"LOAD SERVING ENTITY" MEANS AN ELECTRIC COMPANY, MUNICIPAL~~
31 ~~CORPORATION, OR COOPERATIVE SERVING ELECTRICITY CUSTOMERS IN MARYLAND.~~32 (E) ~~"PJM REGION" HAS THE MEANING STATED UNDER § 7-701 OF THE PUBLIC~~
33 ~~UTILITY COMPANIES ARTICLE.~~

1 ~~2-1002.~~

2 (A) ~~ON OR AFTER JANUARY 1, 2010, THERE IS AN ANNUAL CEILING ON THE~~
3 ~~TOTAL AMOUNT OF OXIDES OF NITROGEN AND SULFUR DIOXIDE EMISSIONS FROM~~
4 ~~AFFECTED FACILITIES AS FOLLOWS:~~

5 (1) ~~21,303 TONS OF OXIDES OF NITROGEN; AND~~

6 (2) ~~39,925 TONS OF SULFUR DIOXIDE.~~

7 (B) ~~ON OR AFTER JANUARY 1, 2015, THE ANNUAL CEILING ON THE TOTAL~~
8 ~~AMOUNT OF OXIDES OF NITROGEN AND SULFUR DIOXIDE EMISSIONS FROM~~
9 ~~AFFECTED FACILITIES SHALL BE REDUCED TO:~~

10 (1) ~~13,339 TONS OF OXIDES OF NITROGEN; AND~~

11 (2) ~~24,645 TONS OF SULFUR DIOXIDE.~~

12 (C) ~~THE DEPARTMENT SHALL SET EMISSIONS BUDGETS FOR EACH AFFECTED~~
13 ~~FACILITY TO IMPLEMENT THE EMISSIONS LIMITATIONS IN SUBSECTIONS (A) AND (B)~~
14 ~~OF THIS SECTION.~~

15 (D) ~~ON OR AFTER JANUARY 1, 2010, A PERSON THAT OWNS, LEASES,~~
16 ~~OPERATES, OR CONTROLS AN AFFECTED FACILITY SHALL:~~

17 (1) ~~ACHIEVE A MINIMUM 90% CAPTURE OF INLET MERCURY FOR EACH~~
18 ~~AFFECTED FACILITY, CALCULATED AS A ROLLING 12 MONTH AVERAGE; AND~~

19 (2) ~~DEMONSTRATE COMPLIANCE WITH PARAGRAPH (1) OF THIS~~
20 ~~SUBSECTION THROUGH THE DIRECT MONITORING OF MERCURY EMISSIONS ON A~~
21 ~~CONTINUOUS BASIS, ACCORDING TO THE REQUIREMENTS OF 40 C.F.R. PART 60,~~
22 ~~60.49A(P), 60.4170-60.4176, AND 40 C.F.R. PART 75, SUBPART I.~~

23 (E) ~~NOT LATER THAN JUNE 30, 2007:~~

24 (1) ~~THE GOVERNOR SHALL INCLUDE THE STATE AS A FULL~~
25 ~~PARTICIPANT IN THE REGIONAL GREENHOUSE GAS INITIATIVE AMONG~~
26 ~~MID-ATLANTIC AND NORTHEAST STATES; OR~~

27 (2) ~~THE DEPARTMENT SHALL ADOPT REGULATIONS TO REQUIRE A 10%~~
28 ~~REDUCTION OF CARBON DIOXIDE EMISSIONS FROM AFFECTED FACILITIES BY 2018,~~
29 ~~THROUGH AN IN STATE SYSTEM FOR TRADING AND TRACKING CARBON DIOXIDE~~
30 ~~EMISSIONS IN ACCORDANCE WITH SUBSECTION (F) OF THIS SECTION.~~

31 (F) ~~AS PART OF THE SYSTEM REQUIRED UNDER SUBSECTION (E)(2) OF THIS~~
32 ~~SECTION, THE DEPARTMENT SHALL:~~

33 (1) ~~CREATE A BASELINE EMISSION LEVEL BY ESTABLISHING~~
34 ~~ALLOWANCES FOR THE EMISSION OF CARBON DIOXIDE EQUIVALENT TO THE 2004~~
35 ~~CARBON DIOXIDE EMISSIONS OF THE AFFECTED FACILITIES AS FOLLOWS:~~

1 ~~(F) THE DEPARTMENT SHALL GRANT UP TO 75% OF THE~~
2 ~~ALLOWANCES TO THE OWNERS OF THE AFFECTED FACILITIES IN PROPORTION TO~~
3 ~~THEIR 2004 EMISSIONS;~~

4 ~~(H) THE DEPARTMENT SHALL AUCTION AT LEAST 25% OF THE~~
5 ~~ALLOWANCES, WITH THE PROCEEDS DEPOSITED IN THE MARYLAND CARBON~~
6 ~~REDUCTION FUND ESTABLISHED UNDER § 9-2009 OF THE STATE GOVERNMENT~~
7 ~~ARTICLE;~~

8 ~~(H) EFFECTIVE JANUARY 1, 2009, A PERSON THAT OWNS, LEASES,~~
9 ~~OPERATES, OR CONTROLS AN AFFECTED FACILITY MAY NOT EMIT MORE CARBON~~
10 ~~DIOXIDE THAN THE TOTAL ALLOWANCES HELD BY THE PERSON;~~

11 ~~(IV) EFFECTIVE JANUARY 1, 2015, THE NUMBER OF TONS OF~~
12 ~~CARBON DIOXIDE REPRESENTED BY EACH ALLOWANCE SHALL BE REDUCED BY 2.5%~~
13 ~~PER YEAR, SUCH THAT EACH ALLOWANCE IN 2018 WILL REPRESENT 10% LESS THAN~~
14 ~~EACH ALLOWANCE IN 2014;~~

15 ~~(V) FOR THE PURPOSES OF THIS SUBSECTION, CARBON DIOXIDE~~
16 ~~EMISSIONS SHALL BE CALCULATED USING FUEL USE DATA AS REPORTED ON FORM~~
17 ~~906, SUBMITTED TO THE U.S. ENERGY INFORMATION ADMINISTRATION; AND~~

18 ~~(VI) UP TO 3.3% OF THE EMISSIONS OF CARBON DIOXIDE OF AN~~
19 ~~AFFECTED FACILITY MAY BE OFFSET BY CREDITS OBTAINED FROM ANY SPONSOR OF~~
20 ~~AN EMISSIONS REDUCTION OR CARBON SEQUESTRATION PROJECT THAT IS FOUND~~
21 ~~BY THE SECRETARY TO MEET ALL APPLICABLE CRITERIA FOR SUCH PROJECTS IN~~
22 ~~ACCORDANCE WITH THE REGIONAL GREENHOUSE GAS INITIATIVE; AND~~

23 ~~(2) ESTABLISH A SYSTEM FOR OFFSETTING THE CARBON DIOXIDE~~
24 ~~EMISSIONS OF STATEWIDE ELECTRICITY IMPORTS ABOVE THE AMOUNT OF~~
25 ~~ELECTRICITY IMPORTED IN 2004 AS FOLLOWS:~~

26 ~~(f) A LOAD-SERVING ENTITY IN THE STATE THAT CONTRACTS TO~~
27 ~~PURCHASE ELECTRIC POWER GENERATED IN A STATE OTHER THAN MARYLAND OR~~
28 ~~STATES PARTICIPATING IN THE REGIONAL GREENHOUSE GAS INITIATIVE IN ORDER~~
29 ~~TO REPLACE ELECTRIC POWER FORMERLY PURCHASED FROM AN AFFECTED~~
30 ~~FACILITY, SHALL OFFSET THE CARBON DIOXIDE EMISSIONS OF THAT POWER; AND~~

31 ~~(H) THE AMOUNT OF CARBON DIOXIDE EMISSIONS ATTRIBUTED TO~~
32 ~~POWER GENERATED IN A STATE OTHER THAN MARYLAND OR A STATE~~
33 ~~PARTICIPATING IN THE REGIONAL GREENHOUSE GAS INITIATIVE SHALL BE~~
34 ~~CALCULATED ACCORDING TO THE AVERAGE CARBON DIOXIDE EMISSIONS OF THE~~
35 ~~ELECTRICITY GENERATED BY THE PERSON SELLING THE POWER IN THE REGION IN~~
36 ~~WHICH SUCH POWER IS GENERATED.~~

37 ~~(G) THE PROVISIONS OF THIS SECTION MAY NOT BE CONSTRUED TO AFFECT~~
38 ~~EMISSIONS REQUIREMENTS, STANDARDS, OR LIMITATIONS IMPOSED ON~~
39 ~~ELECTRICITY GENERATORS BY ANY OTHER PROVISION OF LAW THAT WOULD~~
40 ~~RESULT IN EMISSIONS REDUCTIONS IN ADDITION TO THOSE REQUIRED UNDER THIS~~
41 ~~SECTION.~~

1 (H) A PERSON THAT OWNS, LEASES, OPERATES, OR CONTROLS AN AFFECTED
2 FACILITY THAT IS SUBJECT TO THE REQUIREMENTS OF THIS SECTION MAY
3 DETERMINE HOW BEST TO ACHIEVE THE COLLECTIVE EMISSIONS REQUIREMENTS
4 UNDER SUBSECTIONS (A), (B), AND (E) OF THIS SECTION.

5 (I) IF THE U.S. ENVIRONMENTAL PROTECTION AGENCY ALLOCATES
6 EMISSION ALLOWANCES FOR MERCURY, SULFUR DIOXIDE, OR OXIDES OF NITROGEN
7 TO THE STATE, THE ALLOWANCES SHALL BE TREATED AS FOLLOWS:

8 (1) A MERCURY ALLOWANCE MAY NOT BE ALLOCATED TO ANY PERSON
9 THAT OWNS, LEASES, OPERATES, OR CONTROLS AN AFFECTED FACILITY OR OTHER
10 SOURCE OF MERCURY EMISSIONS INTO THE ATMOSPHERE OR MERCURY
11 DISCHARGES INTO THE WATERS OF THE STATE.

12 (2) (I) THE DEPARTMENT SHALL HOLD ALL MERCURY ALLOWANCES
13 ALLOCATED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY TO THE STATE.

14 (II) AT THE END OF EACH CALENDAR YEAR, THE DEPARTMENT
15 SHALL INSTRUCT THE U.S. ENVIRONMENTAL PROTECTION AGENCY TO RETIRE
16 PERMANENTLY THE ALLOWANCES.

17 (3) THE DEPARTMENT SHALL ENSURE THAT ANY EMISSION
18 ALLOWANCES FOR SULFUR DIOXIDE OR OXIDES OF NITROGEN ALLOCATED BY THE
19 DEPARTMENT TO ANY PERSON THAT OWNS, LEASES, OPERATES, OR CONTROLS AN
20 AFFECTED FACILITY MAY NOT BE MADE AVAILABLE FOR RESALE OR EXCHANGE.

21 2-1003.

22 (A) BEGINNING DECEMBER 1, 2007, AND EACH YEAR THEREAFTER, A PERSON
23 WHO OWNS, LEASES, OPERATES, OR CONTROLS AN AFFECTED FACILITY SHALL
24 SUBMIT TO THE DEPARTMENT, THE DEPARTMENT OF NATURAL RESOURCES, AND
25 THE PUBLIC SERVICE COMMISSION, A REPORT THAT INCLUDES:

26 (1) EMISSIONS PERFORMANCE RESULTS RELATED TO COMPLIANCE
27 WITH THE EMISSIONS REQUIREMENTS UNDER § 2-1002 OF THIS SUBTITLE;

28 (2) THE NUMBER OF POUNDS OF OXIDES OF NITROGEN, SULFUR
29 DIOXIDE, MERCURY, AND CARBON DIOXIDE EMITTED DURING THE PREVIOUS
30 CALENDAR YEAR FROM THE AFFECTED FACILITY;

31 (3) A CURRENT COMPLIANCE PLAN; AND

32 (4) ANY OTHER INFORMATION REQUESTED BY THE DEPARTMENT.

33 (B) THE DEPARTMENT SHALL REVIEW THE INFORMATION SUBMITTED UNDER
34 THIS SECTION TO DETERMINE WHETHER THE ACTUAL AND PROPOSED
35 MODIFICATIONS AND PERMIT AND CONSTRUCTION SCHEDULES ARE ADEQUATE TO
36 ACHIEVE THE EMISSIONS REQUIREMENTS UNDER THIS SUBTITLE AND SHALL MAKE
37 THESE DETERMINATIONS PUBLICLY AVAILABLE ON AN ANNUAL BASIS.

1 ~~2-1004.~~

2 ~~BY JUNE 30, 2007, THE DEPARTMENT SHALL ADOPT REGULATIONS TO~~
3 ~~IMPLEMENT THE PROVISIONS OF THIS SUBTITLE.~~

4 ~~2-1005.~~

5 ~~(A) THE CRIMINAL PENALTY PROVISIONS OF THIS SECTION ARE IN ADDITION~~
6 ~~TO THE CIVIL PENALTY PROVISIONS PROVIDED UNDER § 2-610 OF THIS TITLE.~~

7 ~~(B) (1) A PERSON MAY NOT KNOWINGLY ACT OR FAIL TO ACT IN VIOLATION~~
8 ~~OF THE PROVISIONS OF THIS SUBTITLE OR THE REGULATIONS ADOPTED UNDER~~
9 ~~THIS SUBTITLE.~~

10 ~~(2) A PERSON WHO VIOLATES PARAGRAPH (1) OF THIS SUBSECTION IS~~
11 ~~GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:~~

12 ~~(I) FOR A FIRST OFFENSE, A FINE NOT EXCEEDING \$25,000 OR~~
13 ~~IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH; OR~~

14 ~~(II) FOR A VIOLATION COMMITTED AFTER A FIRST CONVICTION~~
15 ~~UNDER THIS SECTION, A FINE NOT EXCEEDING \$50,000 OR IMPRISONMENT NOT~~
16 ~~EXCEEDING 2 YEARS OR BOTH.~~

17 ~~(3) EACH DAY ON WHICH A VIOLATION OCCURS IS A SEPARATE~~
18 ~~VIOLATION UNDER THIS SUBSECTION.~~

19 ~~(C) A CRIMINAL PROSECUTION FOR A VIOLATION BROUGHT UNDER THIS~~
20 ~~SECTION SHALL BE INSTITUTED WITHIN 3 YEARS AFTER THE VIOLATION WAS~~
21 ~~COMMITTED.~~

22 **~~Article -- State Government~~**

23 ~~9-2009.~~

24 ~~(A) THERE IS A MARYLAND CARBON REDUCTION FUND ADMINISTERED BY~~
25 ~~THE ADMINISTRATION.~~

26 ~~(B) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT SUBJECT TO §~~
27 ~~7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.~~

28 ~~(C) THE TREASURER SHALL HOLD THE FUND SEPARATELY AND THE~~
29 ~~COMPTROLLER SHALL ACCOUNT FOR THE FUND.~~

30 ~~(D) THE FUND CONSISTS OF:~~

31 ~~(1) PROCEEDS FROM THE SALE OF ALLOWANCES UNDER § 2-1002(E)(2)~~
32 ~~OF THE ENVIRONMENT ARTICLE;~~

33 ~~(2) CRIMINAL FINES AND CIVIL PENALTIES IMPOSED UNDER TITLE 2,~~
34 ~~SUBTITLE 10 OF THE ENVIRONMENT ARTICLE;~~

- 1 (3) ~~MONEY APPROPRIATED IN THE STATE BUDGET TO THE FUND; AND~~
- 2 (4) ~~ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED FOR THE~~
3 ~~BENEFIT OF THE FUND.~~
- 4 (E) ~~THE FUND MAY BE USED ONLY:~~
- 5 (1) ~~TO IMPLEMENT STANDARDS AND TO PROVIDE INCENTIVES TO~~
6 ~~CONSUMERS SO THAT ENERGY EFFICIENT PRODUCTS AND SERVICES THAT ARE NOT~~
7 ~~BROADLY AVAILABLE AND USED BY STATE CONSUMERS BECOME STANDARD~~
8 ~~PRODUCT OFFERINGS;~~
- 9 (2) ~~TO CAPTURE OPPORTUNITIES OTHERWISE LOST FOR~~
10 ~~COST-EFFECTIVE ENERGY EFFICIENT DESIGNS, MATERIALS, AND EQUIPMENT~~
11 ~~WHEN HOMES AND BUILDINGS ARE BUILT, REMODELED, OR RENOVATED, AND WHEN~~
12 ~~EQUIPMENT IS REPLACED;~~
- 13 (3) ~~TO REDUCE PEAK DEMAND FOR ELECTRICITY AND IMPROVE~~
14 ~~SERVICE RELIABILITY FOR ALL CUSTOMERS THROUGH ENERGY EFFICIENCY~~
15 ~~MEASURES THAT ARE ESPECIALLY EFFECTIVE AT REDUCING PEAK SYSTEM~~
16 ~~DEMANDS; AND~~
- 17 (4) ~~TO ENSURE THAT LOW INCOME CUSTOMERS CAN FULLY~~
18 ~~PARTICIPATE IN OPPORTUNITIES TO SAVE ELECTRICITY AND REDUCE THEIR~~
19 ~~ELECTRICITY COSTS.~~

20 2-1001.

21 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
22 INDICATED.

23 (B) (1) "AFFECTED FACILITY" MEANS AN ELECTRICITY GENERATING UNIT
24 IN THE STATE THAT INCLUDES A COAL FIRED BOILER OR INDIRECT HEAT
25 EXCHANGER THAT WAS EXEMPTED FROM THE PREVENTION OF SIGNIFICANT
26 DETERIORATION REVIEW UNDER TITLE 1 OF THE 1977 FEDERAL CLEAN AIR ACT.

27 (2) "AFFECTED FACILITY" INCLUDES:

28 (I) H.A. WAGNER, UNITS 2 AND 3;

29 (II) SUBJECT TO § 2-1003(C) OF THIS SUBTITLE, R.P. SMITH, UNITS 3
30 AND 4;

31 (III) MORGANTOWN GENERATING STATION, UNITS 1 AND 2;

32 (IV) DICKERSON, UNITS 1, 2, AND 3;

33 (V) C.P. CRANE, UNITS 1 AND 2;

34 (VI) CHALK POINT GENERATING STATION, UNITS 1 AND 2; AND

1 (VII) BRANDON SHORES, UNITS 1 AND 2.

2 (3) "AFFECTED FACILITY" DOES NOT INCLUDE ANY ELECTRICITY
3 GENERATING UNIT:

4 (I) THAT OPERATES IN COMBINATION WITH EQUIPMENT USED TO
5 RECOVER USEFUL THERMAL ENERGY FOR INDUSTRIAL, COMMERCIAL, HEATING, OR
6 COOLING PURPOSES THROUGH SEQUENTIAL USE OF ENERGY; OR

7 (II) THAT SUPPLIES IN ANY CALENDAR YEAR LESS THAN
8 ONE-HALF OF THE ELECTRICITY GENERATED BY SUCH UNIT TO ANY UTILITY POWER
9 DISTRIBUTION SYSTEM FOR SALE.

10 (C) "ALLOWANCE" MEANS:

11 (1) ONE TON OF SULFUR DIOXIDE THAT MAY BE BOUGHT, SOLD,
12 TRADED, OR BANKED FOR USE UNDER THE ACID RAIN PROGRAM IN THE U.S.
13 ENVIRONMENTAL PROTECTION AGENCY; OR

14 (2) ONE TON OF OXIDES OF NITROGEN THAT MAY BE BOUGHT, SOLD,
15 TRADED, OR BANKED FOR USE UNDER THE NITROGEN OXIDES BUDGET TRADING
16 PROGRAM IN THE U.S. ENVIRONMENTAL PROTECTION AGENCY.

17 (D) "PJM REGION" HAS THE MEANING STATED UNDER § 7-701 OF THE PUBLIC
18 UTILITY COMPANIES ARTICLE.

19 2-1002.

20 (A) ON OR AFTER JANUARY 1, 2009, AFFECTED FACILITIES COLLECTIVELY
21 MAY NOT EMIT MORE THAN 20,216 TONS OF OXIDES OF NITROGEN PER YEAR.

22 (B) (1) ON OR AFTER JANUARY 1, 2010, AFFECTED FACILITIES
23 COLLECTIVELY MAY NOT EMIT MORE THAN 48,618 TONS OF SULFUR DIOXIDE PER
24 YEAR.

25 (2) THE DEPARTMENT MAY SET AN INTERIM STAGE REDUCTION FOR
26 SULFUR DIOXIDE.

27 (C) ON OR AFTER JANUARY 1, 2012, AFFECTED FACILITIES COLLECTIVELY
28 MAY NOT EMIT MORE THAN 16,667 TONS OF OXIDES OF NITROGEN PER YEAR.

29 (D) ON OR AFTER JANUARY 1, 2013, AFFECTED FACILITIES COLLECTIVELY
30 MAY NOT EMIT MORE THAN 37,235 TONS OF SULFUR DIOXIDE PER YEAR.

31 (E) (1) THE DEPARTMENT SHALL SET EMISSIONS BUDGETS FOR EACH
32 AFFECTED FACILITY TO IMPLEMENT THE EMISSIONS LIMITATIONS IN SUBSECTIONS
33 (A), (B), (C), AND (D) OF THIS SECTION.

34 (2) (I) THIS PARAGRAPH APPLIES TO AN AFFECTED FACILITY THAT IS
35 OWNED, LEASED, OPERATED, OR CONTROLLED BY A PERSON THAT OWNS, LEASES,
36 OPERATES, OR CONTROLS MORE THAN ONE AFFECTED FACILITY.

1 (II) AN AFFECTED FACILITY MAY EMIT MORE THAN THE EMISSIONS
2 BUDGET SET FOR THE FACILITY UNDER PARAGRAPH (1) OF THIS SUBSECTION AS
3 LONG AS THE PERSON OWNING, LEASING, OPERATING, OR CONTROLLING THE
4 AFFECTED FACILITY DOES NOT EXCEED THE CUMULATIVE EMISSIONS BUDGET FOR
5 ALL OF THE AFFECTED FACILITIES THAT THE PERSON OWNS, LEASES, OPERATES, OR
6 CONTROLS.

7 (3) IF AN AFFECTED FACILITY PERMANENTLY CEASES OPERATION, THE
8 DEPARTMENT:

9 (I) SHALL SUBTRACT THE EMISSIONS BUDGET FOR THAT
10 AFFECTED FACILITY FROM THE EMISSIONS LIMITATIONS ESTABLISHED IN
11 SUBSECTIONS (A), (B), (C), AND (D) OF THIS SECTION; AND

12 (II) MAY NOT INCREASE EXISTING EMISSIONS BUDGETS FOR ALL
13 OTHER AFFECTED FACILITIES.

14 (F) (1) ON OR AFTER JANUARY 1, 2010, A PERSON THAT OWNS, LEASES,
15 OPERATES, OR CONTROLS AN AFFECTED FACILITY SHALL ACHIEVE A MINIMUM 80%
16 CAPTURE OF MERCURY FOR EACH AFFECTED FACILITY, CALCULATED AS A ROLLING
17 12-MONTH AVERAGE.

18 (2) ON OR AFTER JANUARY 1, 2013, A PERSON THAT OWNS, LEASES,
19 OPERATES, OR CONTROLS AN AFFECTED FACILITY SHALL ACHIEVE A MINIMUM 90%
20 CAPTURE OF MERCURY FOR EACH AFFECTED FACILITY, CALCULATED AS A ROLLING
21 12-MONTH AVERAGE.

22 (3) A PERSON THAT OWNS, LEASES, OPERATES, OR CONTROLS AN
23 AFFECTED FACILITY SHALL DEMONSTRATE COMPLIANCE WITH THIS SUBSECTION
24 THROUGH THE DIRECT MONITORING OF MERCURY EMISSIONS ON A CONTINUOUS
25 BASIS, ACCORDING TO THE REQUIREMENTS OF 40 C.F.R. PART 60, 60.49A(P),
26 60.4170-60.4176, AND 40 C.F.R. PART 75, SUBPART I.

27 (4) THE DEPARTMENT SHALL ADOPT REGULATIONS THAT ESTABLISH A
28 PROCEDURE TO BE USED TO DETERMINE A BASELINE AMOUNT OF MERCURY AT
29 EACH AFFECTED FACILITY FOR PURPOSES OF CALCULATING THE CAPTURE RATE
30 REQUIRED UNDER THIS SUBSECTION.

31 (G) (1) NOT LATER THAN JUNE 30, 2007, THE GOVERNOR SHALL INCLUDE
32 THE STATE AS A FULL PARTICIPANT IN THE REGIONAL GREENHOUSE GAS INITIATIVE
33 AMONG MID-ATLANTIC AND NORTHEAST STATES.

34 (2) THE STATE MAY WITHDRAW FROM THE INITIATIVE, AS PROVIDED IN
35 THE DECEMBER 20, 2005 MEMORANDUM OF UNDERSTANDING OF THE INITIATIVE, AT
36 ANY TIME AFTER JANUARY 1, 2009.

37 (3) IF THE REGIONAL GREENHOUSE GAS INITIATIVE EXPIRES AND
38 THERE IS A SUCCESSOR ORGANIZATION WITH THE SAME PURPOSES AND GOALS, THE
39 GOVERNOR IS ENCOURAGED TO JOIN THE STATE IN THE SUCCESSOR ORGANIZATION.

1 (4) IF THE STATE'S PARTICIPATION IN THE REGIONAL GREENHOUSE
2 GAS INITIATIVE CEASES FOR ANY REASON, THE GOVERNOR SHALL REPORT TO THE
3 GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT
4 ARTICLE, REGARDING:

5 (I) WHY PARTICIPATION CEASED; AND

6 (II) A PLAN TO REDUCE CARBON DIOXIDE EMISSIONS FROM POWER
7 PLANTS IN THE STATE THAT CONSIDERS THE USE OF MARYLAND GROWN, NATIVE,
8 WARM SEASON GRASSES AS A POSSIBLE METHOD OF REDUCING CARBON EMISSIONS.

9 (H) THE PROVISIONS OF THIS SECTION MAY NOT BE CONSTRUED TO AFFECT
10 EXISTING OR FUTURE EMISSIONS REQUIREMENTS, STANDARDS, OR LIMITATIONS
11 IMPOSED ON ELECTRICITY GENERATORS BY ANY OTHER EXISTING OR FUTURE
12 PROVISION OF LAW THAT WOULD RESULT IN EMISSIONS REDUCTIONS IN ADDITION
13 TO THOSE REQUIRED UNDER THIS SECTION.

14 (I) (1) A PERSON THAT OWNS, LEASES, OPERATES, OR CONTROLS AN
15 AFFECTED FACILITY THAT IS SUBJECT TO THE REQUIREMENTS OF THIS SECTION
16 MAY DETERMINE HOW BEST TO ACHIEVE THE COLLECTIVE EMISSIONS
17 REQUIREMENTS UNDER SUBSECTIONS (A), (B), (C), AND (D) OF THIS SECTION.

18 (2) (I) IF A PERSON THAT OWNS, LEASES, OPERATES, OR CONTROLS
19 AN AFFECTED FACILITY CAN DEMONSTRATE, WITH CLEAR AND CONVINCING
20 EVIDENCE, THAT THE POLLUTION CONTROL EQUIPMENT THAT IS NECESSARY TO
21 ACHIEVE COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION IS
22 UNATTAINABLE, DUE TO A LACK OF AVAILABLE SUPPLY, THE DEPARTMENT MAY
23 REDUCE OR WAIVE ANY PENALTY DUE TO THE FAILURE TO ATTAIN COMPLIANCE
24 UNTIL THE POLLUTION CONTROL EQUIPMENT BECOMES ATTAINABLE.

25 (II) IF A PERSON THAT OWNS, LEASES, OPERATES, OR CONTROLS
26 AN AFFECTED FACILITY CAN DEMONSTRATE, WITH CLEAR AND CONVINCING
27 EVIDENCE, THAT THE POLLUTION CONTROL EQUIPMENT THAT IS NECESSARY TO
28 ACHIEVE COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION HAS
29 SIGNIFICANTLY INCREASED IN COST DUE TO THE LIMITED AMOUNT OF SUPPLY AND,
30 AS A RESULT, MAY SIGNIFICANTLY INCREASE ELECTRIC RATES, THE DEPARTMENT
31 MAY REDUCE OR WAIVE ANY PENALTY DUE TO THE FAILURE TO ATTAIN
32 COMPLIANCE UNTIL THE SUPPLY OF POLLUTION CONTROL EQUIPMENT BECOMES
33 AVAILABLE SO AS TO REASONABLY LOWER THE COST OF THE POLLUTION CONTROL
34 EQUIPMENT.

35 (III) IN DETERMINING WHETHER TO REDUCE OR WAIVE ANY
36 PENALTY UNDER THIS PARAGRAPH, THE DEPARTMENT SHALL CONSULT WITH THE
37 PUBLIC SERVICE COMMISSION AS TO THE AVAILABILITY AND COST OF THE
38 POLLUTION CONTROL EQUIPMENT.

39 (3) (I) A DECISION BY THE DEPARTMENT TO REDUCE OR WAIVE ANY
40 PENALTY UNDER PARAGRAPH (2) OF THIS SUBSECTION SHALL BE SUBJECT TO
41 JUDICIAL REVIEW BY ANY PERSON WHO MEETS THE THRESHOLD STANDING
42 REQUIREMENTS UNDER FEDERAL CONSTITUTIONAL LAW.

1 (II) ANY ACTION TO REDUCE OR WAIVE ANY PENALTY UNDER
2 PARAGRAPH (2) OF THIS SUBSECTION SHALL REMAIN IN EFFECT UNTIL JUDICIAL
3 REVIEW IS FINAL.

4 (J) (1) IF THE U.S. ENVIRONMENTAL PROTECTION AGENCY ALLOCATES
5 EMISSION ALLOWANCES FOR MERCURY, SULFUR DIOXIDE, OR OXIDES OF NITROGEN
6 TO THE STATE, THE ALLOWANCES SHALL BE TREATED AS PROVIDED IN THIS
7 SUBSECTION.

8 (2) THE DEPARTMENT:

9 (I) MAY NOT ALLOW THE APPLICATION OF ALLOWANCES TO THE
10 COMPLIANCE OF ANY AFFECTED FACILITY WITH THE EMISSIONS LIMITATIONS
11 ESTABLISHED UNDER SUBSECTIONS (A) THROUGH (D) OF THIS SECTION; BUT

12 (II) MAY ALLOW THE ALLOWANCES TO BE SOLD OR TRADED TO
13 FACILITIES OUTSIDE THE STATE IN ACCORDANCE WITH ALLOWANCE TRADING
14 PROGRAMS OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY.

15 2-1003.

16 (A) BEGINNING DECEMBER 1, 2007, AND EACH YEAR THEREAFTER, A PERSON
17 THAT OWNS, LEASES, OPERATES, OR CONTROLS AN AFFECTED FACILITY SHALL
18 SUBMIT TO THE DEPARTMENT, THE DEPARTMENT OF NATURAL RESOURCES, AND
19 THE PUBLIC SERVICE COMMISSION, A REPORT THAT INCLUDES:

20 (1) EMISSIONS PERFORMANCE RESULTS RELATED TO COMPLIANCE
21 WITH THE EMISSIONS REQUIREMENTS UNDER § 2-1002 OF THIS SUBTITLE;

22 (2) THE NUMBER OF POUNDS OF OXIDES OF NITROGEN, SULFUR
23 DIOXIDE, MERCURY, AND CARBON DIOXIDE EMITTED DURING THE PREVIOUS
24 CALENDAR YEAR FROM THE AFFECTED FACILITY;

25 (3) A CURRENT COMPLIANCE PLAN; AND

26 (4) ANY OTHER INFORMATION REQUESTED BY THE DEPARTMENT.

27 (B) THE DEPARTMENT SHALL REVIEW THE INFORMATION SUBMITTED UNDER
28 THIS SECTION TO DETERMINE WHETHER THE ACTUAL AND PROPOSED
29 MODIFICATIONS AND PERMIT AND CONSTRUCTION SCHEDULES ARE ADEQUATE TO
30 ACHIEVE THE EMISSIONS REQUIREMENTS UNDER THIS SUBTITLE AND SHALL MAKE
31 THESE DETERMINATIONS PUBLICLY AVAILABLE ON AN ANNUAL BASIS.

32 (C) (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW AND SUBJECT
33 TO PARAGRAPH (2) OF THIS SUBSECTION, THE DEPARTMENT SHALL ALLOW THE R.P.
34 SMITH FACILITY, UNITS 3 AND 4, TO OPERATE WITHOUT COMPLYING WITH THE
35 EMISSIONS REQUIREMENTS UNDER THIS SUBTITLE IF PJM INTERCONNECTION, INC.
36 DETERMINES THAT THE TERMINATION OF OPERATION OF THE FACILITY WILL
37 ADVERSELY AFFECT THE RELIABILITY OF ELECTRICAL SERVICE IN THE PJM REGION.

1 (2) IF THE DEPARTMENT ALLOWS THE R.P. SMITH FACILITY, UNITS 3 AND
2 4, TO OPERATE WITHOUT COMPLYING WITH THE EMISSIONS REQUIREMENTS UNDER
3 THIS SUBTITLE IN ACCORDANCE WITH THIS SUBSECTION:

4 (I) THE FACILITY MAY NOT OPERATE AT EMISSIONS LEVELS
5 GREATER THAN THE HIGHEST LEVEL MEASURED AT THE FACILITY DURING THE
6 CALENDAR YEARS 2000 THROUGH 2004; AND

7 (II) THE DEPARTMENT SHALL REVIEW THE OPERATIONS OF THE
8 FACILITY AND ADOPT REGULATIONS TO ESTABLISH AN ALTERNATIVE EMISSIONS
9 REQUIREMENT FOR THE FACILITY.

10 2-1004.

11 BY JUNE 30, 2007, THE DEPARTMENT SHALL ADOPT REGULATIONS TO
12 IMPLEMENT THE PROVISIONS OF THIS SUBTITLE.

13 2-1005.

14 (A) (1) THE ALLOWANCE PENALTY PROVISIONS OF THIS SECTION ARE IN
15 ADDITION TO THE ADMINISTRATIVE AND CIVIL PENALTY PROVISIONS PROVIDED
16 UNDER §§ 2-604, 2-609, 2-610, AND 2-610.1 OF THIS TITLE.

17 (2) EACH ONE-HALF OUNCE OF MERCURY AND EACH TON OF SULFUR
18 DIOXIDE OR NITROGEN OXIDES EMITTED IN EXCESS OF THE LIMITATIONS SET
19 FORTH OR IMPOSED IN ACCORDANCE WITH § 2-1002 OF THIS SUBTITLE SHALL BE A
20 SEPARATE VIOLATION UNDER §§ 2-610 AND 2-610.1 OF THIS TITLE.

21 (B) IF, IN ANY CALENDAR YEAR DURING THE PERIOD FROM JANUARY 1, 2010
22 THROUGH DECEMBER 31, 2012, A PERSON FAILS TO ACHIEVE AND MAINTAIN FULL
23 COMPLIANCE WITH THE EMISSIONS LIMITATIONS ESTABLISHED BY THE
24 DEPARTMENT UNDER § 2-1002(E) OF THIS SUBTITLE, THE PERSON SHALL
25 SURRENDER:

26 (1) ONE SULFUR DIOXIDE ALLOWANCE FOR EACH TON OF SULFUR
27 DIOXIDE EMITTED IN EXCESS OF THE EMISSION RATE LIMITATION; AND

28 (2) ONE OXIDE OF NITROGEN ALLOWANCE FOR EVERY 2 TONS OF
29 SULFUR DIOXIDE EMITTED IN EXCESS OF THE EMISSION RATE LIMITATION.

30 (C) IF, IN ANY CALENDAR YEAR, DURING THE PERIOD FROM JANUARY 1, 2009
31 THROUGH DECEMBER 31, 2011, A PERSON FAILS TO ACHIEVE FULL COMPLIANCE
32 WITH THE OXIDES OF NITROGEN EMISSION LIMITATIONS IN § 2-1002(A) AND (C) OF
33 THIS SUBTITLE, THE PERSON SHALL SURRENDER ONE OXIDE OF NITROGEN
34 ALLOWANCE FOR EACH TON OF OXIDES OF NITROGEN EMITTED IN EXCESS OF THE
35 REQUIRED EMISSION RATE LIMITATION.

36 (D) A PERSON THAT SURRENDERS ALLOWANCES IN ACCORDANCE WITH
37 SUBSECTIONS (B) OR (C) OF THIS SECTION SHALL SURRENDER THE ALLOWANCES TO
38 THE DEPARTMENT'S SURRENDER ACCOUNT BY MARCH 1 OF THE YEAR FOLLOWING

1 THE YEAR IN WHICH THE PERSON FAILED TO ACHIEVE AND MAINTAIN COMPLIANCE
2 WITH THE APPLICABLE EMISSION LIMITATION.

3 **Article - Public Utility Companies**

4 7-206.

5 (a) This section applies to the installation of pollution control equipment or a
6 change in the method of operation at a generating station that a person performs in
7 order to comply with Phase II pollution control requirements of the federal Clean Air
8 Act.

9 (b) Any person that performs an installation or change in operation under
10 subsection (a) of this section shall obtain prior review and approval of the Commission
11 in accordance with:

12 (1) §§ 7-203, 7-207, and 7-208 of this subtitle; and

13 (2) the procedures set forth in § 7-205 of this subtitle and § 2-405 of the
14 Environment Article.

15 (C) IN ORDER TO MEET COMPLIANCE DATES ESTABLISHED UNDER TITLE 2,
16 SUBTITLE 10 OF THE ENVIRONMENT ARTICLE OR THE FEDERAL CLEAN AIR ACT, A
17 COMMISSION REVIEW AND APPROVAL, OR PROCESSING OF AN APPLICATION FOR A
18 CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY UNDER § 7-207 OF THIS
19 SUBTITLE, SHALL BE EXPEDITED AND TAKE PRECEDENCE OVER OTHER REVIEW AND
20 APPROVAL BY THE COMMISSION IF THE REVIEW AND APPROVAL OR CERTIFICATE OF
21 PUBLIC CONVENIENCE AND NECESSITY IS REQUIRED:

22 (1) FOR POLLUTION CONTROL EQUIPMENT OR A CHANGE IN THE
23 METHOD OF OPERATION AT A GENERATING STATION; AND

24 (2) FOR COMPLIANCE WITH:

25 (I) TITLE 2, SUBTITLE 10 OF THE ENVIRONMENT ARTICLE;

26 (II) REGULATIONS ADOPTED BY THE DEPARTMENT OF THE
27 ENVIRONMENT UNDER TITLE 2, SUBTITLE 10 OF THE ENVIRONMENT ARTICLE; OR

28 (III) THE FEDERAL CLEAN AIR ACT.

29 SECTION 2. AND BE IT FURTHER ENACTED, That:

30 (a) The Department of the Environment shall contract with an academic
31 institution in the State for a study of whether there will be an adverse impact on the
32 State economy, the reliability of the State's energy supply, and the cost of energy for
33 consumers as a result of the State's entry into and continued participation in the
34 Regional Greenhouse Gas Initiative among Mid-Atlantic and Northeast states.

35 (b) The study shall:

1 (1) evaluate whether the State's participation in the Regional
2 Greenhouse Gas Initiative has or may have an adverse impact on:

3 (i) the preservation and enhancement of the economic welfare of
4 the residents of the State;

5 (ii) the maintenance of a safe and reliable electric power supply in
6 the State;

7 (iii) the adequacy of the energy supply in the State, including the
8 potential for power plant shutdowns;

9 (iv) the ability of persons who own, lease, operate, or control an
10 affected facility to compete in neighboring states; or

11 (v) electric rates for residents of the State; and

12 (2) take into consideration:

13 (i) the number of states that are included as full participants in the
14 Regional Greenhouse Gas Initiative;

15 (ii) the mix of energy resources in the states that are included as
16 full participants in the Regional Greenhouse Gas Initiative; and

17 (iii) the availability of credits among participating states.

18 (c) On or before January 1, 2008, the Department shall report to the Governor
19 and, in accordance with § 2-1246 of the State Government Article, the General
20 Assembly on the findings of the study contracted for under this section.

21 SECTION ~~2-3~~. AND BE IT FURTHER ENACTED, That this Act shall take
22 effect July 1, 2006.