
By: Delegates Hubbard, Anderson, Barkley, Benson, Bobo, Branch, Bronrott, Brown, Burns, Cane, Cardin, Carter, V. Clagett, Conroy, Cryor, C. Davis, Doory, Dumais, Feldman, Franchot, Frush, Gaines, Goldwater, Goodwin, Griffith, Gutierrez, Hammen, Harrison, Haynes, Healey, Heller, Hixson, Holmes, Howard, Jones, Kaiser, Kelley, King, Kirk, Krysiak, Kullen, Lawton, Lee, Madaleno, Malone, Mandel, Marriott, McHale, McIntosh, Menes, Moe, Montgomery, Morhaim, Murray, Nathan-Pulliam, Niemann, Oaks, Paige, Parker, Patterson, Pendergrass, Petzold, Proctor, Pugh, Quinter, Ramirez, Rosenberg, Ross, Simmons, Stern, Taylor, F. Turner, V. Turner, Vallario, Vaughn, Weir, and Zirkin

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Assigned to: Economic Matters

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

CHAPTER 301

AN ACT concerning

Healthy Air Act

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

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

BY adding to

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

~~BY adding to~~

~~Article - State Government
 Section 9-2009
 Annotated Code of Maryland
 (2004 Replacement Volume and 2005 Supplement)~~

BY repealing and reenacting, with amendments,

Article - Public Utility Companies
 Section 7-206
 Annotated Code of Maryland
 (1998 Replacement Volume and 2005 Supplement)

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

Article - Environment

SUBTITLE 10. HEALTHY AIR ACT.

2-1001.

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

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

(2) ~~"AFFECTED FACILITY" INCLUDES:~~

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

(II) ~~R.P. SMITH, UNITS 3 AND 4;~~

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

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

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

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

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

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

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

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

(C) ~~"INLET MERCURY" MEANS THE AVERAGE CONCENTRATION OF MERCURY IN FLUE GAS AT THE INLET OF THE EMISSION CONTROL DEVICE IMMEDIATELY DOWNSTREAM OF THE BOILER OF AN ELECTRICITY GENERATING UNIT, AS DETERMINED BY METHODS PRESCRIBED BY THE DEPARTMENT.~~

(D) ~~"LOAD SERVING ENTITY" MEANS AN ELECTRIC COMPANY, MUNICIPAL CORPORATION, OR COOPERATIVE SERVING ELECTRICITY CUSTOMERS IN MARYLAND.~~

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

~~2-1002.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~2-1003.~~

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

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

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

~~(3) A CURRENT COMPLIANCE PLAN; AND~~

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

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

~~2-1004.~~

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

~~2-1005.~~

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

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

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

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

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

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

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

Article—State Government

~~9-2009.~~

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

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

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

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

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

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

~~(3) MONEY APPROPRIATED IN THE STATE BUDGET TO THE FUND; AND~~

~~(4) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED FOR THE BENEFIT OF THE FUND.~~

~~(E) THE FUND MAY BE USED ONLY:~~

~~(1) TO IMPLEMENT STANDARDS AND TO PROVIDE INCENTIVES TO CONSUMERS SO THAT ENERGY EFFICIENT PRODUCTS AND SERVICES THAT ARE NOT BROADLY AVAILABLE AND USED BY STATE CONSUMERS BECOME STANDARD PRODUCT OFFERINGS;~~

~~(2) TO CAPTURE OPPORTUNITIES OTHERWISE LOST FOR COST EFFECTIVE ENERGY EFFICIENT DESIGNS, MATERIALS, AND EQUIPMENT WHEN HOMES AND BUILDINGS ARE BUILT, REMODELED, OR RENOVATED, AND WHEN EQUIPMENT IS REPLACED;~~

~~(3) TO REDUCE PEAK DEMAND FOR ELECTRICITY AND IMPROVE SERVICE RELIABILITY FOR ALL CUSTOMERS THROUGH ENERGY EFFICIENCY MEASURES THAT ARE ESPECIALLY EFFECTIVE AT REDUCING PEAK SYSTEM DEMANDS; AND~~

~~(4) TO ENSURE THAT LOW INCOME CUSTOMERS CAN FULLY PARTICIPATE IN OPPORTUNITIES TO SAVE ELECTRICITY AND REDUCE THEIR ELECTRICITY COSTS.~~

2-1001.

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

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

(2) "AFFECTED FACILITY" INCLUDES:

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

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

AND 4;

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

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

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

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

(VII) BRANDON SHORES, UNITS 1 AND 2.

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

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

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

(C) "ALLOWANCE" MEANS:

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

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

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

2-1002.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(I) WHY PARTICIPATION CEASED; AND

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

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

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

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

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

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

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

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

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

(2) THE DEPARTMENT:

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

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

2-1003.

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

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

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

(3) A CURRENT COMPLIANCE PLAN; AND

(4) ANY OTHER INFORMATION REQUESTED BY THE DEPARTMENT.

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

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

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

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

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

2-1004.

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

2-1005.

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

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

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

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

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

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

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

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

Article - Public Utility Companies

7-206.

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

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

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

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

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

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

(2) FOR COMPLIANCE WITH:

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

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

(III) THE FEDERAL CLEAN AIR ACT.

SECTION 2. AND BE IT FURTHER ENACTED, That:

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

(b) The study shall:

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

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

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

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

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

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

(2) take into consideration:

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

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

(iii) the availability of credits among participating states.

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

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