

SENATE BILL 407

M3
SB 803/10 – EHE

11r2029

By: **Senator Pipkin**

Introduced and read first time: February 4, 2011

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Sewage Sludge Utilization Permits – Chesapeake and Atlantic Coastal Bays**
3 **Critical Area – Judicial Review**

4 FOR the purpose of applying certain standing requirements, legal processes for
5 judicial review of environmental permits, and a certain prohibition against
6 contested case hearings to certain sewage sludge utilization permits issued for
7 land in the Chesapeake and Atlantic Coastal Bays Critical Area; and generally
8 relating to standing in certain environmental protection proceedings and
9 certain judicial actions.

10 BY repealing and reenacting, without amendments,
11 Article – Environment
12 Section 1–101(b), 1–605, and 1–606
13 Annotated Code of Maryland
14 (2007 Replacement Volume and 2010 Supplement)

15 BY repealing and reenacting, with amendments,
16 Article – Environment
17 Section 1–601
18 Annotated Code of Maryland
19 (2007 Replacement Volume and 2010 Supplement)

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

22 **Article – Environment**

23 1–101.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (b) "Contested case hearing" means an adjudicatory hearing in accordance
2 with the contested case procedures of Subtitle 2 of the Maryland Administrative
3 Procedure Act.

4 1-601.

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

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

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

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

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

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

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

20 (7) Permits to own, operate, establish or maintain a low-level nuclear
21 waste facility issued pursuant to § 7-233 of this article; AND

22 **(8) IF THE PERMIT APPLIES TO LAND THAT IS IN THE**
23 **CHESAPEAKE AND ATLANTIC COASTAL BAYS CRITICAL AREA, SEWAGE SLUDGE**
24 **UTILIZATION PERMITS ISSUED UNDER § 9-236 OF THIS ARTICLE.**

25 (b) For permits listed under subsection (a) of this section, a contested case
26 hearing may not occur.

27 (c) A final determination by the Department on the issuance, denial,
28 renewal, or revision of any permit listed under subsection (a) of this section is subject
29 to judicial review at the request of any person that:

30 (1) Meets the threshold standing requirements under federal law; and

31 (2) (i) Is the applicant; or

1 (ii) Participated in a public participation process through the
2 submission of written or oral comments, unless an opportunity for public participation
3 was not provided.

4 (d) (1) Judicial review shall be on the administrative record before the
5 Department and limited to objections raised during the public comment period, unless
6 the petitioner demonstrates that:

7 (i) The objections were not reasonably ascertainable during the
8 comment period; or

9 (ii) Grounds for the objections arose after the comment period.

10 (2) The court shall remand the matter to the Department for
11 consideration of objections under paragraph (1) of this subsection.

12 (e) Unless otherwise required by statute, a petition for judicial review by a
13 person that meets the requirements of subsection (c) of this section shall be filed with
14 the circuit court for the county where the application for the permit states that the
15 proposed activity will occur.

16 (f) (1) When this article requires more than one public informational
17 meeting or public hearing, the Department may consolidate some or all of the
18 meetings or hearings for the proposed facility with similar meetings or hearings.

19 (2) The Department shall hold public informational meetings and
20 public hearings at a location in the political subdivision and in close proximity to the
21 location where the individual permit applies.

22 1-605.

23 (a) A person petitioning for judicial review in accordance with § 1-601 of this
24 subtitle or § 5-204 or § 16-204 of this article shall file the petition in accordance with
25 the Maryland Rules.

26 (b) A party submitting a petition for judicial review shall file the petition
27 within 30 days after publication of a notice of final determination.

28 (c) An action for judicial review brought in accordance with § 1-601 of this
29 subtitle or § 5-204 or § 16-204 of this article shall be conducted in accordance with the
30 Maryland Rules.

31 (d) A party to the judicial review action may not challenge a facility's
32 compliance with zoning and land use requirements or conformity with a county plan
33 issued under Title 9, Subtitle 5 of this article. However, nothing in this subtitle shall
34 prevent a party from challenging whether the Department has complied with §§
35 2-404(b)(1)(ii) and 9-210(a)(3) of this article, when applicable, nor does this subtitle
36 prevent a party from contesting the compliance of the facility with zoning and land use

1 or county plan requirements in any proceeding brought in accordance with and under
2 any applicable local laws.

3 1–606.

4 (a) (1) In this section the following words have the meanings indicated.

5 (2) “Board” means the Board of Public Works.

6 (3) “License” means a license under § 16–202 of this article.

7 (b) This section applies to:

8 (1) A permit listed under § 1–601(a) of this subtitle;

9 (2) A permit listed under § 5–204(f) of this article; or

10 (3) A license issued under § 16–202 of this article.

11 (c) Any judicial review of a determination provided for in accordance with §
12 1–601 of this subtitle or § 5–204 or § 16–204 of this article shall be limited to a record
13 compiled by the Department or Board, consisting of:

14 (1) Any permit or license application and any data submitted to the
15 Department or Board in support of the application;

16 (2) Any draft permit or license issued by the Department or Board;

17 (3) Any notice of intent from the Department or Board to deny the
18 application or to terminate the permit or license;

19 (4) A statement or fact sheet explaining the basis for the
20 determination by the Department or Board;

21 (5) All documents referenced in the statement or fact sheet explaining
22 the basis for the determination by the Department or Board;

23 (6) All documents, except documents for which disclosure is precluded
24 by law or that are subject to privilege, contained in the supporting file for any draft
25 permit or license;

26 (7) All comments submitted to the Department or Board during the
27 public comment period, including comments made on the draft application;

28 (8) Any tape or transcript of any public hearings held on the
29 application; and

1 (9) Any response to any comments submitted to the Department or
2 Board.

3 (d) (1) When a draft permit or license or tentative determination is
4 issued, the Department or Board shall:

5 (i) Make available for inspection and copying no later than the
6 date the permit, draft license, or tentative determination is issued:

7 1. All permit or license applications;

8 2. Documents submitted with a permit or license
9 application;

10 3. All documents relied on in making the tentative
11 determination; and

12 4. A privilege log that identifies all documents not
13 produced for inspection in accordance with subsection (c)(6) of this section and states
14 the reasons for withholding each document; and

15 (ii) Extend the public comment period by 60 days on request by
16 a person.

17 (2) A request submitted to the Department or Board under paragraph
18 (1)(ii) of this subsection shall be:

19 (i) Submitted in writing; and

20 (ii) Made before the expiration of the original comment period.

21 (3) A public comment period may not be extended more than once
22 under paragraph (1)(ii) of this subsection.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 July 1, 2011.