

# SENATE BILL 1008

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SB 803/10 – EHE

3lr3301

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By: **Senator Pipkin**

Introduced and read first time: February 20, 2013

Assigned to: Rules

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## 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 2012 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 2012 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.

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

16 (2) The decision of the circuit court may be appealed to the Court of  
17 Special Appeals.

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

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

24 1-605.

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

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

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

33 (d) A party to the judicial review action may not challenge a facility's  
34 compliance with zoning and land use requirements or conformity with a county plan

1 issued under Title 9, Subtitle 5 of this article. However, nothing in this subtitle shall  
2 prevent a party from challenging whether the Department has complied with §§  
3 2–404(b)(1)(ii) and 9–210(a)(3) of this article, when applicable, nor does this subtitle  
4 prevent a party from contesting the compliance of the facility with zoning and land use  
5 or county plan requirements in any proceeding brought in accordance with and under  
6 any applicable local laws.

7 1–606.

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

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

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

11 (b) This section applies to:

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

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

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

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

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

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

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

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

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

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

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

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

3                   (9) Any response to any comments submitted to the Department or  
4 Board.

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

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

9                               1. All permit or license applications;

10                              2. Documents submitted with a permit or license  
11 application;

12                              3. All documents relied on in making the tentative  
13 determination; and

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

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

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

21                              (i) Submitted in writing; and

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

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

25           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
26 July 1, 2013.