

Article - Natural Resources

[Previous][Next]

§1-504.

(a) This subtitle may not be construed to create or authorize any new substantive cause of action or theory of recovery not now recognized by the courts of this State, nor may it be construed as abrogating any cause of action or theory of recovery now recognized by the courts of this State but is for the sole purpose of providing standing to sue to the persons set forth in § 1-503 of this subtitle, subject to the provisions and limitations set forth in this subtitle.

(b) Except as provided in § 1-503(b) of this subtitle, nothing in this subtitle constitutes a waiver by the State or any agency of the defense of sovereign immunity, and this defense is expressly reserved.

(c) This subtitle does not authorize an action for monetary damages. The remedies available to any plaintiff who acquires standing to sue solely by virtue of this subtitle are limited to mandamus or equitable relief, including declaratory relief as to whether a permit or order has been unlawfully issued or is being violated, and a judgment or decree for monetary damages may not be awarded. However, a judgment for monetary damages may be awarded in any action where a judgment is appropriate to a plaintiff who has standing to sue other than by virtue of this subtitle.

(d) This subtitle does not abrogate the existing requirement and principles of exhaustion of administrative remedies, and this subtitle does not broaden, except as specifically set forth, the rights of intervention of persons in administrative hearings and in appeals from the hearings.

(e) This subtitle is not to be construed in any way to alter the present provisions of law relating to standing in any matter affecting local zoning.

(f) (1) Except as provided in this subtitle, relief may not be granted in any action filed under this subtitle with respect to any defendant who shows that the condition, activity, or failure complained of is under and in compliance with:

(i) A lawful, current permit or order of an agency of the State or a political subdivision authorized to issue the permit or order;

(ii) An order or other adjudication of a court of competent jurisdiction in a proceeding in which all of the material issues involved in the action were raised and determined, whether or not the parties to the prior litigation were identical to the parties in the pending action; or

(iii) A lawful current permit or order of an agency of the United States government authorized to issue the permit or order.

(2) If the court finds, upon clear and convincing evidence at any stage of

the proceeding, that the condition, activity, or failure complained of exists and either presents an imminent danger to the health, welfare, or safety of the people of the State, or results in or is likely to result in irreversible or irreparable damage to the air, water, or other natural resources of the State, the court may remand the matter to the agency with instructions to consider and make factual determinations with respect to the material issues, as determined by the court, within a time considered reasonable by the court. A finding may not be made until the defendant has been provided an opportunity by the court to present evidence rebutting the plaintiff's evidence.

[Previous][Next]