

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulations  
Department of the Environment  
(DLS Control No. 15-164)**

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**Overview and Legal and Fiscal Impact**

The regulations modify various procedures regarding the approval, denial, and issuance of specified air quality control permits, including establishing a process for judicial review of specified permit determinations in accordance with current law.

The regulations present no legal issues of concern.

The regulations have no fiscal impact on State or local agencies.

**Regulations of COMAR Affected**

**Department of the Environment:**

Air Quality: Permits, Approvals, and Registration: COMAR 26.11.02.07, .11, and .12

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**Legal Analysis**

**Background**

Chapter 650 of 2009 expands standing for individuals, associations, and organizations when bringing challenges related to the issuance, denial, renewal, or revision of specified permits issued under the Environment Article, including air quality control permits to construct that are subject to the requirements under § 2-404. Chapter 650 prohibits the covered permits from being challenged in a contested case process, and instead provides for judicial review on the administrative record. Chapter 650 also requires that the Department of the Environment make specified documents and information available for inspection and copying when a tentative determination for an air quality permit to construct is issued. Chapter 650 became effective January 1, 2010.

Chapter 501 of 2013 requires the department, on receipt of specified ambient air quality control permit applications, to ensure that notice is immediately provided to the governing body of each local government within one mile of the subject of the application, as well as each member of the General Assembly representing any part of a county located within one mile of the subject of the application. Chapter 501 became effective October 1, 2013.

Chapter 608 of 2013 alters the public participation requirements associated with the issuance of an ambient air quality control permit for sources that must comply with specified

federal air quality (New Source Performance Standards or “NSPS”) regulations. Under Chapter 608, before issuing a permit for a source that must comply with NSPS regulations, the department must provide notice either through the current public participation process or by (1) electronically posting a notice of the permit application on the department’s website; (2) giving notice to the chief executive of any local government in which a portion of the source is located or proposed to be located; and (3) receiving comments from the public. Chapter 608 became effective October 1, 2013.

## **Summary of Regulations**

The regulations implement the aforementioned laws and include regulations that (1) establish a process for judicial review of specified permit determinations by the department; (2) specify that the denial of an ambient air quality control permit to construct is a final determination subject to judicial review; (3) eliminate obsolete cross-references pertaining to contested case procedures; (4) require that specified documents and information be made available to the public when a tentative determination for an air quality permit to construct is issued; and (5) require specified notice be provided by the department before specified permits are issued and at the time of receipt of specified permit applications.

## **Legal Issue**

The regulations present no legal issues of concern.

## **Statutory Authority and Legislative Intent**

The department cites §§ 1-101, 1-404, 2-101 through 2-103, 2-301 through 2-303, and 2-401 through 2-404 as statutory authority for these regulations. More specifically, § 2-404 requires the department, on receipt of specified ambient air quality control permit applications, to ensure that notice is immediately provided to the governing body of each local government within one mile of the subject of the application, as well as each member of the General Assembly representing any part of a county located within one mile of the subject of the application. Additionally, § 2-404 provides notice requirements pertaining to permits for sources that must comply with NSPS standards. The remaining cited authority is not relevant for these regulations.

Although not cited by the department, §§ 1-601, 1-605, and 1-606 of the Environment Article provide additional authority for the regulations. Section 1-601 prohibits, in part, contested case hearings for the issuance, denial, renewal, or revisions of ambient air quality control permits to construct and subjects such permits to specified judicial review requirements. Section 1-605 requires that petitions for judicial review be filed in accordance with the Maryland Rules and within 30 days after publication of a notice of final determination. Section 1-605 also precludes a party to the judicial review action from challenging a facility’s compliance with zoning and land use requirements. Section 1-606 establishes procedures and requirements applicable to judicial review and requires the department to provide certain documents and information when, among other things, a tentative determination is issued.

With the addition of §§ 1-601, 1-605, and 1-606, the relevant cited authority is correct and complete. The regulations comply with the legislative intent of the law.

### **Technical Corrections and Special Notes**

In response to suggestions from the Department of Legislative Services, the department will add §§ 1-601 through 1-606 of the Environment Article as legal authority for the regulations.

### **Fiscal Analysis**

The regulations have no fiscal impact on State or local agencies.

### **Agency Estimate of Projected Fiscal Impact**

The department advises that the regulations have no impact on State or local governments. The department notes that the changes make existing regulations consistent with Chapters 650 and 651 of 2009 (Senate Bill 1065/House Bill 1569), Chapters 500 and 501 of 2013 (Senate Bill 563/House Bill 554), and Chapter 608 of 2013 (House Bill 95); however, these bills have already been implemented. Thus, the regulations merely reflect current practice. The Department of Legislative Services concurs.

### **Impact on Budget**

There is no impact on the State operating or capital budget.

### **Agency Estimate of Projected Small Business Impact**

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

### **Contact Information**

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