
By: Delegate Billings

Introduced and read first time: February 9, 1996

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Environment - Permits - Standing**

3 FOR the purpose of establishing certain standards for determining whether a person is
4 aggrieved under the provisions of law relating to contested case hearings on certain
5 permit decisions made by the Department of the Environment; providing for the
6 application of these standards; altering a certain standard for the granting of a
7 contested case hearing on certain permits issued by the Department of the
8 Environment; and generally relating to standing to challenge certain permits issued
9 by the Department of the Environment.

10 BY repealing and reenacting, with amendments,
11 Article - Environment
12 Section 1-605 and 5-204 (a)(1) and (g)
13 Annotated Code of Maryland
14 (1993 Replacement Volume and 1995 Supplement)

15 BY repealing and reenacting, without amendments,
16 Article - Environment
17 Section 1-606
18 Annotated Code of Maryland
19 (1993 Replacement Volume and 1995 Supplement)

20 BY adding to
21 Article - Environment
22 Section 5-205
23 Annotated Code of Maryland
24 (1993 Replacement Volume and 1995 Supplement)

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

27 **Article - Environment**

28 1-605.

1 (A) IN ADDITION TO THE PERMITS SET FORTH IN § 1-601 (A) OF THIS SUBTITLE,
2 THIS SECTION APPLIES TO ANY PERMIT FOR WHICH THE DEPARTMENT PROVIDES
3 AN OPPORTUNITY FOR A CONTESTED CASE HEARING TO A PARTY OTHER THAN THE
4 APPLICANT UNDER § 1-601(B) OF THIS SUBTITLE.

5 [(a)] (B) (1) A person may request a contested case hearing to appeal a final
6 determination if the person makes factual allegations with sufficient particularity to
7 demonstrate that:

8 [(1)] (I) The person is aggrieved by the final determination; and

9 [(2)] (II) The final determination is:

10 [(i)] 1. Legally inconsistent with any provisions of law applicable to
11 the final determination being challenged; or

12 [(ii)] 2. Based upon an incorrect determination of a relevant and
13 material fact.

14 (2) FOR PURPOSES OF PARAGRAPH (1) OF THIS SUBSECTION, A PERSON
15 IS AGGRIEVED IF THE PERSON:

16 (I) MADE A TIMELY WRITTEN REQUEST THAT HAS NOT BEEN
17 WITHDRAWN FOR AN INFORMATIONAL MEETING OR CONTESTED CASE HEARING;
18 AND

19 (II) PARTICIPATED IN AN INFORMATIONAL MEETING WITH
20 RESPECT TO THE APPLICATION FOR A PERMIT.

21 [(b)] (C) A party requesting a contested case hearing shall submit a written
22 request for adjudication within 15 days after publication of a notice of final
23 determination.

24 [(c)] (D) The request for adjudication shall set forth the basis for the request with
25 sufficient particularity to assure that the issues to be raised are within the scope of
26 subsection [(a)] (B) of this section and that the person is aggrieved by the final
27 determination.

28 [(d)] (E) A party may not, in a contested case hearing, challenge a facility's
29 compliance with zoning and land use requirements or conformity with a county plan
30 issued under Title 9, Subtitle 5 of this article. However, nothing in this subtitle shall
31 prevent a party from challenging whether the Department has complied with §§
32 2-404(b)(2)(ii) and 9-210(a)(3) of this article, when applicable, nor does this subtitle
33 prevent a party from contesting the compliance of the facility with zoning and land use or
34 county plan requirements in any proceeding brought in accordance with and under any
35 applicable local laws.

36 [(e)] (F) A contested case hearing shall be conducted in accordance with Subtitle
37 2 of Title 10 of the State Government Article.

38 1-606.

39 (a) (1) If a request for a hearing is so vague or ambiguous that the Department
40 or the official conducting the hearing cannot reasonably determine whether specific

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1 allegations on any issue have been made in compliance with § 1-605 of this subtitle, the
2 Department or the official may require the person making the request to file a more
3 definite statement with specific allegations within 15 days.

4 (2) If a more definite statement is not made within 15 days, the Department
5 or the official conducting the hearing may strike the request or any part of the request.

6 (b) (1) The request for adjudication shall be reviewed by the Department, and a
7 determination shall be made whether the person making the request is entitled to a
8 contested case hearing under applicable law on all or any part of the allegations made in
9 the request.

10 (2) The Department shall dismiss all or any part of a request for a contested
11 case hearing if the Department determines that the person is not entitled to a contested
12 case hearing under applicable law on all or part of the allegations made in the request.

13 (c) In addition to the provisions set forth in subsection (b) of this section and at
14 the request of any party, including the Department, the administrative law judge shall
15 dismiss all or any part of a request for a contested case hearing if the administrative law
16 judge determines that the person making the request has failed to make the
17 demonstration required by § 1-605 of this subtitle, including the failure to make factual
18 allegations with sufficient particularity to demonstrate that the person is aggrieved by the
19 final determination.

20 (d) (1) Any party to a contested case hearing, including the Department, may
21 file at any time a motion for a summary decision on all or part of an action on the ground
22 that there is no genuine dispute as to any material fact and that the party is entitled to a
23 decision as a matter of law.

24 (2) The motion, any response and the decision of the administrative law
25 judge or other official conducting the hearing shall comply with the requirements of
26 Maryland Rule of Civil Procedure 2-501.

27 (e) (1) When a summary disposition under any of the provisions of this section
28 does not dispose of the entire action and a contested case hearing is necessary, the
29 Department official or administrative law judge issuing the summary disposition, on the
30 basis of the request and any other pleadings and, if necessary, after interrogating counsel
31 on the record, may enter an order specifying the issues or facts that are not in genuine
32 dispute.

33 (2) The order controls the subsequent course of the action but may be
34 modified by the Department official or the administrative law judge to prevent manifest
35 injustice.

36 (f) Except as provided in subsection (g) of this section, an order or other form of
37 summary disposition under this section, however designated, that adjudicates fewer than
38 all of the issues in an action, or that adjudicates issues concerning fewer than all of the
39 parties to the action:

40 (1) Is not a final decision of the Department or the administrative law judge;

41 (2) Does not terminate the action as to any issues or any of the parties; and

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1 (3) Is subject to revision at any time before the entry of a final decision by
2 the Department that adjudicates all of the issues raised by or against all of the parties.

3 (g) (1) If the official making a summary disposition under this section
4 determines in a written order that there is no just reason for delay, he may direct in the
5 order the entry of a decision as to one or more but fewer than all of the issues or parties.

6 (2) A decision entered pursuant to this subsection shall be appealable in the
7 same manner as a decision by the Department official or administrative law judge after a
8 contested case hearing.

9 5-204.

10 (a) (1) (I) It is the intent of the General Assembly to establish consolidated
11 procedures and notice and hearing requirements for Title 5, Subtitles 5 and 9 and Titles
12 14, 15, and 16 of this article in order to ensure efficient review and consistent decision
13 making.

14 (II) THE PROVISIONS OF THIS SECTION AND OF § 5-205 OF THIS
15 SUBTITLE SHALL APPLY TO ANY PERMIT ISSUED BY THE DEPARTMENT UNDER
16 TITLE 5, SUBTITLES 5 AND 9 AND TITLES 14, 15, AND 16 OF THIS ARTICLE.

17 (g) (1) Upon written request the Department shall grant a contested case
18 hearing if it determines that:

19 [(1)] (I) The requester [has a specific right, duty, privilege, or interest
20 which is or may be adversely affected by the permit determination or license decision and
21 which is different from that held by the general public] IS AGGRIEVED BY THE FINAL
22 DETERMINATION;

23 [(2)] (II) The requester raises adjudicable issues which are within the scope
24 of the permit authority; and

25 [(3)] (III) The request is timely.

26 (2) FOR PURPOSES OF PARAGRAPH (1) (I) OF THIS SUBSECTION, A
27 PERSON IS AGGRIEVED IF THE PERSON:

28 (I) MADE A TIMELY WRITTEN REQUEST THAT HAS NOT BEEN
29 WITHDRAWN FOR AN INFORMATIONAL MEETING OR CONTESTED CASE HEARING;
30 AND

31 (II) PARTICIPATED IN AN INFORMATIONAL MEETING WITH
32 RESPECT TO THE APPLICATION FOR A PERMIT.

33 5-205.

34 (A) ON REQUEST BY THE DEPARTMENT OR ANY OTHER PARTY TO A
35 CONTESTED CASE, THE ADMINISTRATIVE LAW JUDGE SHALL ORDER A PARTY WHO
36 REQUESTED A CONTESTED CASE HEARING TO PROVIDE COMPETENT AND
37 MATERIAL EVIDENCE THAT THE PARTY IS AGGRIEVED AS ALLEGED IN THE PARTY'S
38 REQUEST AND IN ACCORDANCE WITH § 5-204(G) OF THIS SUBTITLE.

1 (B) IF A PARTY IS NOT ABLE TO PRODUCE COMPETENT AND MATERIAL
2 EVIDENCE IN RESPONSE TO AN ORDER UNDER SUBSECTION (A) OF THIS SECTION,
3 THE ADMINISTRATIVE LAW JUDGE SHALL MAKE A SUMMARY DISPOSITION
4 DISMISSING THE REQUEST OF THAT PARTY AND EXCLUDING THAT PARTY FROM
5 FURTHER PARTICIPATION AS A PARTY IN THE CONTESTED CASE HEARING.

6 (C) IF ALL PARTIES WHICH MADE REQUESTS FOR CONTESTED CASE
7 HEARINGS IN ACCORDANCE WITH § 5-204 OF THIS SUBTITLE ARE DISMISSED, THE
8 ADMINISTRATIVE LAW JUDGE SHALL ISSUE A SUMMARY DISPOSITION UPHOLDING
9 THE FINAL DETERMINATION OF THE DEPARTMENT.

10 SECTION 2. AND BE IT FURTHER ENACTED, That the provisions set forth in
11 §§ 1-605(b) and 8-206(g) of the Environment Article shall apply only to final permit
12 decisions made on or after the date of enactment of this Act.

13 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 1996.