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Introduced and read first time: February 14, 1996

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Environment - Permits - Standing**

3 FOR the purpose of requiring that issuance of permits to conduct certain activities in
4 wetlands be in accordance with certain provisions regarding public participation in
5 the permitting process; defining "aggrieved" for the purpose of authorizing certain
6 individuals to have standing to participate in the permitting process under certain
7 circumstances to include the applicant for the permit, certain political subdivisions,
8 certain organizations, and certain other persons with certain grievances; authorizing
9 the Department of the Environment or the permittee to challenge an assertion of
10 aggrievement in a certain manner; requiring an administrative law judge to enter a
11 decision on aggrievement in a certain manner; requiring an administrative law judge
12 to hold a hearing under certain circumstances; authorizing a party to appeal a
13 certain decision of an administrative law judge in a certain manner; providing a
14 certain exception for certain decisions under certain circumstances; making
15 technical changes; making a stylistic change; defining a certain term; and generally
16 relating to standing to contest the issuance of a permit.

17 BY repealing and reenacting, with amendments,
18 Article - Environment
19 Section 1-101, 1-601, 1-605, and 1-606
20 Annotated Code of Maryland
21 (1993 Replacement Volume and 1995 Supplement)

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

24 **Article - Environment**

25 1-101.

26 (a) In this article the following words have the meanings indicated.

2

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

4 (c) "County" means a county of this State and, unless expressly provided
5 otherwise, Baltimore City.

6 (d) "Department" means the Department of the Environment.

7 (e) "Health officer" means the Baltimore City Commissioner of Health or the
8 health officer of a county.

9 (f) "Includes" or "including" means includes or including by way of illustration
10 and not by way of limitation.

11 (g) "Informational meeting" means a meeting, open to the public, at which the
12 applicant or the Department presents information concerning a permit application. An
13 informational meeting is not a contested case hearing nor an agency hearing under §
14 10-202(d) of the State Government Article.

15 (H) "ORGANIZATION" MEANS AN ENTITY WHICH HAS A MARYLAND
16 AFFILIATION BY:

17 (1) INCORPORATING UNDER THE LAWS OF THIS STATE;

18 (2) CONDUCTING BUSINESS IN THIS STATE; OR

19 (3) HAVING A MEMBER WHO RESIDES IN THIS STATE.

20 [(h)] (I) "Person" means an individual, receiver, trustee, guardian, personal
21 representative, fiduciary, or representative of any kind and any partnership, firm,
22 association, corporation, or other entity.

23 [(i)] (J) "Physician" means an individual who is authorized under the Maryland
24 Medical Practice Act to practice medicine in this State.

25 [(j)] (K) "Public hearing" means a meeting, open to the public, at which the
26 Department receives oral and written comments concerning a tentative determination. A
27 public hearing is not a contested case hearing nor an agency hearing under § 10-202(c) of
28 the State Government Article.

29 [(k)] (L) "Secretary" means the Secretary of the Environment.

30 [(l)] (M) "State" means:

31 (1) A state, possession, or territory of the United States;

32 (2) The District of Columbia; or

33 (3) The Commonwealth of Puerto Rico.

34 [(m)] (N) "Substantively" means in a manner substantially affecting the rights,
35 duties, or obligations of a member of the public.

3

1 1-601.

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

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

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

7 (3) Permits to discharge pollutants to waters of the State issued pursuant to
8 § 9-323 of this article;

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

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

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

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

18 (8) PERMITS TO CONDUCT REGULATED ACTIVITIES IN WETLANDS
19 UNDER §§ 5-906, 16-202, AND 16-302 OF THIS ARTICLE.

20 (b) Notwithstanding any other provision of law to the contrary, the Department is
21 not required to provide an opportunity for a contested case hearing to any party other
22 than the applicant in connection with any permit issued pursuant to this article except the
23 permits listed in subsection (a) of this section.

24 (c) When this article requires more than one public informational meeting, public
25 hearing, or contested case hearing, the Department may consolidate some or all of the
26 meetings or hearings for the proposed facility with similar meetings or hearings.

27 1-605.

28 (a) A person may request a contested case hearing to appeal a final determination
29 if the person makes factual allegations with sufficient particularity to demonstrate that:

30 (1) The person is aggrieved by the final determination AS PROVIDED IN
31 THIS SECTION; and

32 (2) The final determination is:

33 (i) Legally inconsistent with any provisions of law applicable to the
34 final determination being challenged; or

35 (ii) Based upon an incorrect determination of a relevant and material
36 fact.

4

1 (B) (1) AN APPLICANT FOR A PERMIT IS AGGRIEVED IF THERE IS A FINAL
2 DETERMINATION THAT THE PERMIT IS:

3 (I) DENIED; OR

4 (II) ISSUED WITH CONDITIONS TO WHICH THE APPLICANT
5 OBJECTS.

6 (2) A COUNTY OR MUNICIPALITY IS AGGRIEVED IF IT PRESENTS
7 COMPETENT AND MATERIAL EVIDENCE THAT A FINAL DETERMINATION TO ISSUE A
8 PERMIT IS FOR A FACILITY WHICH WILL BE LOCATED WITHIN THE GEOGRAPHIC
9 BOUNDARIES OF THE COUNTY OR MUNICIPALITY AND THAT AT LEAST ONE
10 RESIDENT OF THE COUNTY OR MUNICIPALITY IS AGGRIEVED IN ACCORDANCE
11 WITH THIS SUBSECTION.

12 (3) AN ORGANIZATION IS AGGRIEVED IF IT PRESENTS COMPETENT AND
13 MATERIAL EVIDENCE THAT A MEMBER OF THE ORGANIZATION:

14 (I) SATISFIES THE REQUIREMENTS OF PARAGRAPH (5) OF THIS
15 SUBSECTION; AND

16 (II) WAS A MEMBER OF THE ORGANIZATION AT THE TIME THE
17 FIRST NOTICE OF APPLICATION FOR A PERMIT WAS PUBLISHED.

18 (4) A PERSON WHOSE PROPERTY IS ADJOINING, CONFRONTING, OR
19 NEARBY TO THE PROPERTY THAT IS THE SUBJECT OF THE PERMITTED ACTIVITY IS
20 PRESUMED TO BE AGGRIEVED, UNLESS IT IS ESTABLISHED BY A PREPONDERANCE
21 OF THE COMPETENT AND MATERIAL EVIDENCE THAT THE PERSON DOES NOT
22 SATISFY THE REQUIREMENTS OF PARAGRAPHS (5) AND (6) OF THIS SUBTITLE.

23 (5) A PERSON IS AGGRIEVED, REGARDLESS OF WHETHER THE PERSON
24 POSSESSES A SPECIAL INTEREST DIFFERENT FROM THE INTEREST POSSESSED
25 GENERALLY BY OTHER RESIDENTS OF THIS STATE, IF THE PERSON PRESENTS
26 COMPETENT AND MATERIAL EVIDENCE THAT:

27 (I) THE GRANTING OF THE PERMIT IN ACCORDANCE WITH THE
28 FINAL DETERMINATION WOULD BE INJURIOUS TO:

29 1. THE PERSON'S HEALTH OR PROPERTY; OR

30 2. PLANT OR ANIMAL LIFE ON THE PERSON'S PROPERTY OR
31 ON ABUTTING PUBLIC PROPERTY; AND

32 (II) THE INJURED INTEREST IS WITHIN THE ZONE OF INTERESTS
33 SOUGHT TO BE PROTECTED BY THE PROVISIONS OF THIS ARTICLE UNDER WHICH
34 THE PERMIT BEING CHALLENGED IS ISSUED.

35 (6) THE REQUIREMENTS OF PARAGRAPH (5) OF THIS SUBSECTION ARE
36 SATISFIED ON A SHOWING THAT THE INJURY IS ACTUAL OR THREATENED.

37 [(b)] (C) A party requesting a contested case hearing shall submit awritten
38 request for adjudication within 15 days after publication of a notice of final
39 determination.

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

4 [(d)] (E) A party may not, in a contested case hearing, challenge a facility's
5 compliance with zoning and land use requirements or conformity with a county plan
6 issued under Title 9, Subtitle 5 of this article. However, nothing in this subtitle shall
7 prevent a party from challenging whether the Department has complied with §§
8 2-404(b)(2)(ii) and 9-210(a)(3) of this article, when applicable, nor does this subtitle
9 prevent a party from contesting the compliance of the facility with zoning and land use or
10 county plan requirements in any proceeding brought in accordance with and under any
11 applicable local laws.

12 [(e)] (F) A contested case hearing shall be conducted in accordance with
13 [Subtitle 2 of Title 10] TITLE 10, SUBTITLE 2 of the State Government Article.

14 1-606.

15 (a) (1) If a request for a hearing is so vague or ambiguous that the Department
16 or the official conducting the hearing cannot reasonably determine whether specific
17 allegations on any issue have been made in compliance with § 1-605 of this subtitle, the
18 Department or the official may require the person making the request to file a more
19 definite statement with specific allegations within 15 days.

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

22 (b) (1) The request for adjudication shall be reviewed by the Department, and a
23 determination shall be made whether the person making the request is entitled to a
24 contested case hearing under [applicable law] § 1-605(A)(2) OF THIS SUBTITLE on all or
25 any part of the allegations made in the request.

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

29 (c) (1) In addition to the provisions set forth in subsection (b) of this section
30 [and at the request of any party, including the Department, the administrative law judge
31 shall dismiss all or any part of a request for a contested case hearing if the administrative
32 law judge determines that the person making the request has failed to make the
33 demonstration required by § 1-605 of this subtitle, including the failure to make factual
34 allegations with sufficient particularity to demonstrate that the person is aggrieved by the
35 final determination], IF THE ALLEGATIONS OF AGGRIEVEMENT ARE CHALLENGED
36 BY EITHER THE DEPARTMENT OR THE PERMITTEE WITHIN 15 DAYS AFTER THE
37 REQUEST IS FILED OR RECEIVED BY THE PERMITTEE, THE REQUEST FOR A
38 CONTESTED CASE HEARING SHALL BE PROMPTLY REFERRED TO AN
39 ADMINISTRATIVE LAW JUDGE.

40 (2) THE ADMINISTRATIVE LAW JUDGE SHALL MAKE A DETERMINATION
41 WITHIN 60 DAYS AFTER THE REFERRAL AS TO WHETHER THE PERSON REQUESTING
42 THE HEARING IS AGGRIEVED.

1 (3) THE ADMINISTRATIVE LAW JUDGE MAY CONSIDER AND ENTER A
2 DECISION BASED ON EVIDENCE, AFFIDAVITS, OR BOTH.

3 (4) THE ADMINISTRATIVE LAW JUDGE SHALL DETERMINE IN EACH
4 CASE WHETHER A HEARING ON AGGRIEVEMENT WILL BE HELD, BUT MAY NOT
5 ENTER A DETERMINATION THAT A PERSON IS NOT AGGRIEVED WITHOUT HEARING
6 ORAL ARGUMENTS.

7 (5) (I) A DETERMINATION THAT THE PERSON REQUESTING THE
8 HEARING IS NOT AGGRIEVED IS A FINAL DETERMINATION, SUBJECT TO JUDICIAL
9 REVIEW UNDER THE ADMINISTRATIVE PROCEDURE ACT.

10 (II) A DETERMINATION THAT THE PERSON REQUESTING THE
11 HEARING IS AGGRIEVED IS SUBJECT TO JUDICIAL REVIEW AT THE CONCLUSION OF
12 THE CONTESTED CASE OR UNDER SUBSECTION (G) OF THIS SECTION.

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

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

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

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

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

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

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

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

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

7

1 (2) [A] EXCEPT FOR A DECISION ENTERED UNDER SUBSECTION (C) OF
2 THIS SECTION, A decision entered [pursuant to] IN ACCORDANCE WITH this subsection
3 shall be appealable in the same manner as a decision by the Department official or
4 administrative law judge after a contested case hearing.

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 1996.