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**By: Delegates Taylor, Guns, Dewberry, Hurson, Arnick, Busch, Curran, Harrison, Hixson, Menes, Owings, Rawlings, and Vallario**

Requested: October 2, 1996

Introduced and read first time: January 8, 1997

Assigned to: Environmental Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Environment - Permits - Standing**

3 FOR the purpose of repealing provisions of law relating to certain contested case  
4 hearings; establishing appeals on certain permit decisions made by the Department  
5 of the Environment; establishing certain standards for determining whether a  
6 person is aggrieved under the provisions of law relating to appeals on certain permit  
7 decisions made by the Department; requiring the Secretary of the Environment to  
8 compile a record of an appeal which shall include certain information; requiring the  
9 appeal to be on the record; requiring the Secretary to notify certain persons when  
10 the record is compiled; allowing a party to submit certain information to the record;  
11 requiring the Secretary to add certain information to the record under certain  
12 circumstances; establishing that the Secretary has final decision making authority;  
13 providing that a person is entitled to judicial review; defining a certain term;  
14 providing for the application of this Act; and generally relating to appeals of certain  
15 permits issued by the Department of the Environment.

16 BY repealing and reenacting, without amendments,  
17 Article - Environment  
18 Section 1-101  
19 Annotated Code of Maryland  
20 (1996 Replacement Volume and 1996 Supplement)

21 BY adding to  
22 Article - Environment  
23 Section 1-601, 1-607, and 1-608  
24 Annotated Code of Maryland  
25 (1996 Replacement Volume and 1996 Supplement)

26 BY repealing  
27 Article - Environment  
28 Section 1-606  
29 Annotated Code of Maryland  
30 (1996 Replacement Volume and 1996 Supplement)

1 BY repealing and reenacting, with amendments,  
2 Article - Environment  
3 Section 1-601 through 1-605  
4 Annotated Code of Maryland  
5 (1996 Replacement Volume and 1996 Supplement)

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

8 **Article - Environment**

9 1-101.

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

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

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

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

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

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

21 (g) "Informational meeting" means a meeting, open to the public, at which the  
22 applicant or the Department presents information concerning a permit application. An  
23 informational meeting is not a contested case hearing nor an agency hearing under §  
24 10-202(d) of the State Government Article.

25 (h) "Person" means an individual, receiver, trustee, guardian, personal  
26 representative, fiduciary, or representative of any kind and any partnership, firm,  
27 association, corporation, or other entity.

28 (i) "Physician" means an individual who is authorized under the Maryland  
29 Medical Practice Act to practice medicine in this State.

30 (j) "Public hearing" means a meeting, open to the public, at which the  
31 Department receives oral and written comments concerning a tentative determination. A  
32 public hearing is not a contested case hearing nor an agency hearing under § 10-202(d) of  
33 the State Government Article.

34 (k) "Secretary" means the Secretary of the Environment.

35 (l) "State" means:

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

37 (2) The District of Columbia; or

3

1 (3) The Commonwealth of Puerto Rico.

2 (m) "Substantively" means in a manner substantially affecting the rights, duties, or  
3 obligations of a member of the public.

4 1-601.

5 IN THIS SUBTITLE, "SECRETARY" MEANS THE SECRETARY OF THE  
6 ENVIRONMENT OR THE SECRETARY'S DESIGNEE.

7 [1-601.] 1-602.

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

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

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

13 (3) Permits to discharge pollutants to waters of the State issued pursuant to  
14 § 9-323 of this article;

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

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

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

22 (7) Permits to own, operate, establish or maintain a low-level nuclear waste  
23 facility issued pursuant to § 7-233 of this article.

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

28 (c) When this article requires more than one public informational meeting[,] OR  
29 public hearing, [or contested case hearing,] the Department may consolidate some or all  
30 of the meetings or hearings for the proposed facility with similar meetings [or hearings].  
31 [1-602.] 1-603.

32 (a) Wherever this subtitle requires the Department to publish notice:

33 (1) Notice shall be published at least once a week for 2 consecutive weeks in  
34 a daily or weekly newspaper of general circulation in the geographical area in which the  
35 proposed facility is located;

36 (2) The Department may require notice of an informational meeting or a  
37 public hearing by mail to each person requesting the meeting or hearing or to their  
38 authorized representatives;

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1 (3) The Department may provide additional notice by requiring the notice  
2 to be posted at the proposed facility or at public facilities in the geographical area of the  
3 proposed facility; and

4 (4) The applicant shall bear all costs incurred by the Department in  
5 providing notice.

6 (b) The Department may publish the notice or require the applicant to publish  
7 the notice.

8 [1-603.] 1-604.

9 (a) The Department shall cause to be published notice of applications for permits.

10 (b) The Department shall assure that applications for permits shall be available to  
11 the public for inspection and copying.

12 (c) (1) Upon written request made within 10 working days after publication of a  
13 notice of application, or in its own discretion, the Department shall provide an  
14 opportunity for an informational meeting with respect to the application.

15 (2) The informational meeting may be canceled if all persons who made  
16 timely written requests withdraw the requests prior to the meeting.

17 (3) Unless the notice of application contained a notice of the informational  
18 meeting, the Department shall publish notice of the informational meeting.

19 (d) (1) The Department may require the applicant to attend an informational  
20 meeting or public [or contested case] hearing and present information concerning the  
21 application.

22 (2) If the applicant fails to appear and present information after a request  
23 from the Department, the application may be denied.

24 [1-604.] 1-605.

25 (a) (1) After the Department receives the permit application, the Department  
26 shall prepare a tentative determination, which shall include the following information:

27 (i) A proposal to issue or to not issue a permit;

28 (ii) Any proposed permit limitations and conditions;

29 (iii) A brief explanation of the Department's tentative determination;  
30 and

31 (iv) Any proposed schedule of compliance.

32 (2) If the tentative determination is to issue a permit, the tentative  
33 determination shall include a draft permit, which shall be available to the public for  
34 inspection and copying.

35 (3) The Department shall publish a notice of the tentative determination.  
36 This publication shall allow 30 calendar days for public comment before the issuance of  
37 the final determination.

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1 (4) (i) The Department shall schedule a public hearing on the tentative  
2 determination when a written request for a public hearing is made within 20 days of  
3 publication of a notice of the tentative determination.

4 (ii) The public hearing may be canceled if all persons who made timely  
5 written requests withdraw the requests prior to the meeting. In addition, the Department  
6 may schedule a public hearing on a tentative determination at its discretion.

7 (b) (1) The Department shall prepare a final determination if:

8 (i) Written comments adverse to the tentative determination were  
9 received by the Department within 30 days after the publication of the notice of tentative  
10 determination pursuant to this section;

11 (ii) Comments adverse to the tentative determination were received in  
12 writing at, or within 5 days after, the public hearing conducted pursuant to this section;

13 (iii) Comments adverse to the tentative determination were received  
14 orally at the public hearing conducted pursuant to this section and the Department  
15 prepared a transcript of the comments made at the hearing; or

16 (iv) The final determination is substantively different from the  
17 tentative determination and all persons aggrieved by the final determination have not  
18 waived, in writing, their right to [request a contested case hearing] FILE AN APPEAL.

19 (2) If the Department is required to prepare a final determination under  
20 this section, the Department shall publish a notice of the final determination.

21 (3) If the Department is not required to prepare a final determination  
22 under this section, the tentative determination is a final decision by the Department when  
23 the permit is issued or denied.

24 [1-605.] 1-606.

25 (A) IT IS THE INTENT OF THE GENERAL ASSEMBLY TO:

26 (1) PROVIDE STANDING TO APPEAL A FINAL DETERMINATION UNDER  
27 THIS SECTION TO AN APPLICANT, A POLITICAL SUBDIVISION, A NOT FOR PROFIT  
28 ORGANIZATION, OR A PERSON IF THAT APPLICANT, POLITICAL SUBDIVISION, NOT  
29 FOR PROFIT ORGANIZATION, OR PERSON WOULD HAVE STANDING TO APPEAL A  
30 FINAL DECISION ON AN ENVIRONMENTAL PERMIT ISSUED BY THE UNITED STATES  
31 ENVIRONMENTAL PROTECTION AGENCY; AND

32 (2) ELIMINATE THE REQUIREMENTS FOR A CONTESTED CASE HEARING  
33 IN CONNECTION WITH THE ISSUANCE OF A FINAL DETERMINATION ON AN  
34 ENVIRONMENTAL PERMIT.

35 [(a)] (B) A person may [request a contested case hearing to] FILE AN appeal OF  
36 a final determination if the person makes factual allegations with sufficient particularity  
37 to demonstrate that:

38 (1) The person is aggrieved AS PROVIDED FOR IN THIS SECTION by the  
39 final determination; and

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1 (2) The final determination [is:

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

4 (ii) Based upon an incorrect determination of a relevant and material  
5 fact] SHOULD BE REVERSED OR MODIFIED IN ACCORDANCE WITH § 10-222(H) OF  
6 THE STATE GOVERNMENT ARTICLE.

7 [(b)] (C) A party [requesting a contested case hearing shall submit a written  
8 request for adjudication within 15 days after publication of a notice of final  
9 determination] SHALL FILE A NOTICE OF APPEAL IN THE MANNER AND WITHIN THE  
10 DEADLINES FOR FILING PROVIDED BY MARYLAND RULE 7-203.

11 [(c)] (D) The [request for adjudication] NOTICE OF APPEAL shall set forth the  
12 basis for the request with sufficient particularity to assure that the issues to be raised are  
13 within the scope of subsection [(a)] (B) of this section and that the person is aggrieved by  
14 the final determination.

15 (E) FOR THE PURPOSES OF SUBSECTION (B) OF THIS SECTION AND OF THIS  
16 SUBTITLE, A PERSON IS AGGRIEVED AS PROVIDED FOR IN THIS SUBSECTION.

17 (1) AN APPLICANT IS AGGRIEVED WHENEVER A FINAL  
18 DETERMINATION IS A DECISION TO DENY THE APPLICANT'S REQUEST FOR A PERMIT  
19 OR IS A DECISION TO ISSUE THE PERMIT SUBJECT TO CONDITIONS.

20 (2) A POLITICAL SUBDIVISION OF THE STATE IS AGGRIEVED  
21 WHENEVER A RESIDENT OF THE POLITICAL SUBDIVISION IS AGGRIEVED.

22 (3) (I) A NOT FOR PROFIT ORGANIZATION IS AGGRIEVED  
23 WHENEVER:

24 1. A BONA FIDE MEMBER OF THE ORGANIZATION IS  
25 AGGRIEVED;

26 2. THE INTERESTS THE ORGANIZATION SEEKS TO PROTECT  
27 ARE GERMANE TO THE ORGANIZATION'S PURPOSE; AND

28 3. THE APPEAL FILED OR THE RELIEF REQUESTED DO NOT  
29 REQUIRE THE PARTICIPATION OF AN INDIVIDUAL MEMBER AS AN INDISPENSABLE  
30 PARTY TO THE APPEAL.

31 (II) A NOT FOR PROFIT ORGANIZATION IS NOT REQUIRED TO  
32 DEMONSTRATE A PROPERTY INTEREST THAT IS SEPARATE AND DISTINCT FROM A  
33 MEMBER OF THE ORGANIZATION'S INTERESTS IN ORDER TO BE AGGRIEVED.

34 (4) (I) IN THIS PARAGRAPH, "INJURY" MEANS AN INJURY TO:

35 1. A PERSON'S HEALTH OR PROPERTY;

36 2. PLANT OR ANIMAL LIFE ON A PERSON'S PROPERTY; OR

37 3. AESTHETIC, CONSERVATIONAL, RECREATIONAL, OR  
38 ECONOMIC INTERESTS OF A PERSON.

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1 (II) ANY OTHER PERSON IS AGGRIEVED IF THE PERSON:

2 1. SUBMITTED COMMENTS ADVERSE TO THE TENTATIVE  
3 DETERMINATION IN ACCORDANCE WITH § 1-605 OF THIS SUBTITLE; AND

4 2. PRESENTS COMPETENT AND MATERIAL EVIDENCE THAT  
5 THE PERSON WILL SUFFER AN INJURY THAT IS:

6 A. CONCRETE AND PARTICULARIZED RATHER THAN  
7 HYPOTHETICAL;

8 B. FAIRLY TRACEABLE TO THE FINAL DETERMINATION;

9 C. LIKELY TO BE REDRESSED BY AN APPEAL; AND

10 D. WITHIN THE SCOPE OF INTERESTS PROTECTED BY ANY  
11 PROVISION OF LAW APPLICABLE TO THE PERMIT BEING CHALLENGED.

12 (III) A PERSON IS NOT REQUIRED TO DEMONSTRATE AN INJURY OR  
13 PROPERTY RIGHT THAT IS DIFFERENT FROM AN INJURY OR INTEREST OF THE  
14 GENERAL PUBLIC IN ORDER TO BE AGGRIEVED.

15 [(d)] (F) A party may not, in [a contested case hearing] AN APPEAL FROM A  
16 FINAL DETERMINATION, challenge a facility's compliance with zoning and land use  
17 requirements or conformity with a county plan issued under Title 9, Subtitle 5 of this  
18 article. However, nothing in this subtitle shall prevent a party from challenging whether  
19 the Department has complied with §§ 2-404(b)(2)(ii) and 9-210(a)(3) of this article,  
20 when applicable, nor does this subtitle prevent a party from contesting the compliance of  
21 the facility with zoning and land use or county plan requirements in any proceeding  
22 brought in accordance with and under any applicable local laws.

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

25 [1-606.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 1-607.

39 (A) WITHIN 10 DAYS AFTER RECEIPT OF A NOTICE OF AN APPEAL, THE  
 40 SECRETARY SHALL COMPILE A RECORD OF THE APPEAL THAT SHALL INCLUDE:

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1 (1) ALL MATERIAL REQUIRED TO BE COMPILED PURSUANT TO § 10-218  
2 OF THE STATE GOVERNMENT ARTICLE AFTER A CONTESTED CASE HEARING;

3 (2) A TRANSCRIPT OF ANY PUBLIC HEARING CONCERNING THE PERMIT  
4 IF:

5 (I) A TRANSCRIPT OF THE HEARING WAS TAKEN; AND

6 (II) THE PERSON FILING THE NOTICE OF APPEALS PAYS THE COST  
7 OF PREPARING THE TRANSCRIPT;

8 (3) A WRITTEN FINAL DETERMINATION WHICH CONTAINS ALL OF THE  
9 EVIDENCE SET FORTH IN § 10-213 OF THE STATE GOVERNMENT ARTICLE EXCEPT  
10 FOR THE WRITTEN STATEMENT OF APPEAL RIGHTS;

11 (4) ALL DOCUMENTS SUBMITTED TO THE DEPARTMENT DURING A  
12 PUBLIC COMMENT PERIOD OR AT A PUBLIC HEARING HELD IN CONNECTION WITH  
13 AN APPLICATION FOR A PERMIT; AND

14 (5) ANY OTHER EVIDENCE CONSIDERED BY THE SECRETARY PRIOR TO  
15 THE ISSUANCE OF THE FINAL DETERMINATION.

16 (B) AN APPEAL FILED IN ACCORDANCE WITH § 1-606 OF THIS SUBTITLE IS  
17 LIMITED TO THE RECORD ESTABLISHED UNDER THIS SECTION UNLESS THE COURT,  
18 PURSUANT TO § 10-222(F) OF THE STATE GOVERNMENT ARTICLE, ORDERS THE  
19 SECRETARY TO CONSIDER ADDITIONAL MATERIAL.

20 (C) THE FILING OF A NOTICE OF APPEAL DOES NOT STAY A FINAL  
21 DETERMINATION UNLESS THE SECRETARY OR THE REVIEWING COURT  
22 DETERMINES THAT A STAY SHOULD BE ISSUED UNDER § 10-222(E) OF THE STATE  
23 GOVERNMENT ARTICLE.

24 (D) EXCEPT AS PROVIDED FOR IN THIS SUBTITLE, THE APPEAL SHALL BE  
25 DECIDED IN ACCORDANCE WITH § 10-222 OF THE STATE GOVERNMENT ARTICLE  
26 AND CHAPTER 200 OF TITLE 7 OF THE MARYLAND RULES AS IF THE APPEAL WAS  
27 FROM A FINAL DECISION FOLLOWING A CONTESTED CASE HEARING.

28 1-608.

29 (A) THE SECRETARY SHALL HAVE FINAL DECISION MAKING AUTHORITY FOR  
30 THE PURPOSES OF § 10-222 OF THE STATE GOVERNMENT ARTICLE.

31 (B) A PERSON WHO IS AGGRIEVED BY A FINAL DETERMINATION OF THE  
32 DEPARTMENT IS ENTITLED TO JUDICIAL REVIEW IN ACCORDANCE WITH § 10-222 OF  
33 THE STATE GOVERNMENT ARTICLE AS IF THE APPEAL WAS TAKEN FROM A FINAL  
34 DECISION IN A CONTESTED CASE HEARING.

35 (C) THE SECRETARY MAY NOT CONDUCT A CONTESTED CASE HEARING IN  
36 CONNECTION WITH A FINAL DETERMINATION ISSUED UNDER THIS SUBTITLE.

37 SECTION 2. AND BE IT FURTHER ENACTED, That the provisions set forth in  
38 Title 1, Subtitle 6 of the Environment Article shall apply only to final permit decisions  
39 made on or after the date of enactment of this Act.

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1           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2 October 1, 1997.