

---

By: **Delegates Hubbard and Billings**  
Introduced and read first time: February 9, 2001  
Assigned to: Environmental Matters

---

A BILL ENTITLED

1 AN ACT concerning

2 **Department of the Environment - Permits - Standing**

3 FOR the purpose of establishing certain standards for determining whether a person  
4 is aggrieved under the provisions of law relating to contested case hearings on  
5 certain permit decisions made by the Department of the Environment; providing  
6 for the application of these standards; establishing certain requirements for the  
7 summary disposition of certain requests for certain contested case hearings  
8 under certain circumstances; establishing certain rights to appeal certain  
9 decisions by the Department; establishing that certain persons are aggrieved for  
10 purposes of bringing and maintaining an appeal under certain circumstances;  
11 establishing certain procedures for an appeal; and generally relating to standing  
12 to challenge certain permits issued by the Department of the Environment.

13 BY repealing and reenacting, with amendments,  
14 Article - Environment  
15 Section 1-601, 1-605, 1-606, and 5-204(a)(1) and (g)  
16 Annotated Code of Maryland  
17 (1996 Replacement Volume and 2000 Supplement)

18 BY adding to  
19 Article - Environment  
20 Section 1-608, 5-205, and 5-206  
21 Annotated Code of Maryland  
22 (1996 Replacement Volume and 2000 Supplement)

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

25 **Article - Environment**

26 1-601.

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

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

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

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

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

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

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

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

17 (b) Notwithstanding any other provision of law to the contrary, the  
18 Department is not required to provide an opportunity for a contested case hearing to  
19 any party other than the applicant in connection with any permit issued pursuant to  
20 this article except:

21 (1) [the]THE permits listed in subsection (a) of this section; AND

22 (2) THE PERMITS ISSUED UNDER TITLE 5, SUBTITLES 5 AND 9 AND  
23 TITLES 14, 15, AND 16 OF THIS ARTICLE.

24 (c) (1) When this article requires more than one public informational  
25 meeting, public hearing, or contested case hearing, the Department may consolidate  
26 some or all of the meetings or hearings for the proposed facility with similar meetings  
27 or hearings.

28 (2) The Department shall hold public informational meetings and public  
29 hearings at a location in the political subdivision and in close proximity to the location  
30 where the individual permit applies.

31 1-605.

32 (A) IN ADDITION TO THE PERMITS SET FORTH IN § 1-601(A) OF THIS SUBTITLE,  
33 THIS SECTION APPLIES TO AN OPERATING PERMIT UNDER A STATE DELEGATED  
34 PROGRAM SUBJECT TO TITLE V OF THE FEDERAL CLEAN AIR ACT.

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

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

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

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

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

10 (2) (I) FOR PURPOSES OF PARAGRAPH (1) OF THIS SUBSECTION, A  
11 PERSON IS AGGRIEVED UNDER THE CIRCUMSTANCES DESCRIBED IN THIS  
12 PARAGRAPH.

13 (II) AN APPLICANT FOR A PERMIT IS AGGRIEVED IF THERE IS A  
14 FINAL DETERMINATION THAT THE PERMIT IS:

15 1. DENIED; OR

16 2. ISSUED WITH CONDITIONS TO WHICH THE APPLICANT  
17 OBJECTS.

18 (III) A COUNTY OR MUNICIPAL CORPORATION IS AGGRIEVED IF IT  
19 PRESENTS COMPETENT AND MATERIAL EVIDENCE THAT A FINAL DETERMINATION  
20 TO ISSUE A PERMIT IS FOR A FACILITY WHICH WILL BE LOCATED WITHIN THE  
21 GEOGRAPHIC BOUNDARIES OF THE COUNTY OR MUNICIPAL CORPORATION AND  
22 THAT AT LEAST ONE RESIDENT OF THE COUNTY OR MUNICIPAL CORPORATION IS  
23 AGGRIEVED IN ACCORDANCE WITH THIS PARAGRAPH.

24 (IV) AN ORGANIZATION THAT IS INCORPORATED IN THIS STATE OR  
25 THAT CONDUCTS SUBSTANTIAL ACTIVITIES IN THIS STATE IS AGGRIEVED IF IT  
26 PRESENTS COMPETENT AND MATERIAL EVIDENCE THAT A MEMBER OF THE  
27 ORGANIZATION:

28 1. SATISFIES THE REQUIREMENTS OF SUBPARAGRAPH (VI)  
29 OF THIS PARAGRAPH; AND

30 2. WAS A MEMBER OF THE ORGANIZATION AT THE TIME THE  
31 FIRST NOTICE OF APPLICATION FOR A PERMIT WAS PUBLISHED.

32 (V) A PERSON WHOSE PROPERTY IS ADJOINING, CONFRONTING, OR  
33 NEARBY TO THE PROPERTY THAT IS THE SUBJECT OF THE PERMITTED ACTIVITY IS  
34 PRESUMED TO BE AGGRIEVED, UNLESS IT IS ESTABLISHED BY A PREPONDERANCE  
35 OF THE COMPETENT AND MATERIAL EVIDENCE THAT THE PERSON DOES NOT  
36 SATISFY THE REQUIREMENTS OF SUBPARAGRAPHS (VI) AND (VII) OF THIS  
37 PARAGRAPH.

1 (VI) A PERSON IS AGGRIEVED, REGARDLESS OF WHETHER THE  
2 PERSON POSSESSES A SPECIAL INTEREST DIFFERENT FROM THE INTEREST  
3 POSSESSED GENERALLY BY OTHER RESIDENTS OF THIS STATE, IF THE PERSON  
4 PRESENTS COMPETENT AND MATERIAL EVIDENCE THAT:

5 1. THE GRANTING OF THE PERMIT IN ACCORDANCE WITH  
6 THE FINAL DETERMINATION WOULD BE INJURIOUS TO:

7 A. THE PERSON'S HEALTH OR PROPERTY; OR

8 B. PLANT OR ANIMAL LIFE ON THE PERSON'S PROPERTY OR  
9 ON ABUTTING PUBLIC PROPERTY; AND

10 2. THE INJURED INTEREST IS WITHIN THE ZONE OF  
11 INTERESTS SOUGHT TO BE PROTECTED BY THE PROVISIONS OF THIS ARTICLE  
12 UNDER WHICH THE PERMIT BEING CHALLENGED IS ISSUED.

13 (VII) THE REQUIREMENTS OF SUBPARAGRAPH (VI) OF THIS  
14 PARAGRAPH ARE SATISFIED ON A SHOWING THAT THE INJURY IS ACTUAL OR  
15 THREATENED.

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

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

23 [(d)] (E) A party may not, in a contested case hearing, challenge a facility's  
24 compliance with zoning and land use requirements or conformity with a county plan  
25 issued under Title 9, Subtitle 5 of this article. However, nothing in this subtitle shall  
26 prevent a party from challenging whether the Department has complied with §§  
27 2-404(b)(1)(ii) and 9-210(a)(3) of this article, when applicable, nor does this subtitle  
28 prevent a party from contesting the compliance of the facility with zoning and land  
29 use or county plan requirements in any proceeding brought in accordance with and  
30 under any applicable local laws.

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

33 1-606.

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

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

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

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

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

19 (D) (1) ON REQUEST OF THE DEPARTMENT OR ANY OTHER PARTY TO A  
20 CONTESTED CASE, THE ADMINISTRATIVE LAW JUDGE SHALL ORDER A PARTY WHO  
21 REQUESTED A CONTESTED CASE HEARING TO PROVIDE COMPETENT AND MATERIAL  
22 EVIDENCE THAT THE PARTY IS AGGRIEVED AS ALLEGED IN THEIR REQUEST AND IN  
23 ACCORDANCE WITH § 1-605(B) OF THIS SUBTITLE.

24 (2) IF ANY PARTY IS NOT ABLE TO PROVIDE COMPETENT AND MATERIAL  
25 EVIDENCE IN RESPONSE TO THE ORDER, THE ADMINISTRATIVE LAW JUDGE SHALL  
26 MAKE A SUMMARY DISPOSITION DISMISSING THE REQUEST OF THAT PARTY AND  
27 EXCLUDING THAT PARTY FROM FURTHER PARTICIPATION AS A PARTY IN THE  
28 CONTESTED CASE HEARING.

29 (3) IF ALL PARTIES THAT MADE REQUESTS FOR CONTESTED CASE  
30 HEARINGS IN ACCORDANCE WITH § 1-605(B) OF THIS SUBTITLE ARE DISMISSED, THE  
31 ADMINISTRATIVE LAW JUDGE SHALL ISSUE A SUMMARY DISPOSITION UPHOLDING  
32 THE FINAL DETERMINATION OF THE DEPARTMENT.

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

37 (2) The motion, any response and the decision of the administrative law  
38 judge or other official conducting the hearing shall comply with the requirements of  
39 Maryland Rule 2-501.

40 [(e)] (F) (1) When a summary disposition under any of the provisions of this  
41 section does not dispose of the entire action and a contested case hearing is necessary,

1 the Department official or administrative law judge issuing the summary disposition,  
2 on the basis of the request and any other pleadings and, if necessary, after  
3 interrogating counsel on the record, may enter an order specifying the issues or facts  
4 that are not in genuine dispute.

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

8 [(f)] (G) Except as provided in subsection [(g)] (H) of this section, an order or  
9 other form of summary disposition under this section, however designated, that  
10 adjudicates fewer than all of the issues in an action, or that adjudicates issues  
11 concerning fewer than all of the parties to the action:

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

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

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

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

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

26 1-608.

27 (A) IN ADDITION TO THE PERMITS SET FORTH IN § 1-601 (A) OF THIS SUBTITLE,  
28 THIS SECTION APPLIES TO AN OPERATING PERMIT UNDER A STATE DELEGATED  
29 PROGRAM SUBJECT TO TITLE V OF THE FEDERAL CLEAN AIR ACT.

30 (B) IN ADDITION TO ANY RIGHT TO JUDICIAL REVIEW PROVIDED BY THIS  
31 ARTICLE OR ANY OTHER PROVISION OF LAW, A PERSON MAY APPEAL A FINAL  
32 DECISION BY THE DEPARTMENT TO GRANT A PERMIT IF THE APPEAL IS FILED IN  
33 ACCORDANCE WITH THIS SECTION.

34 (C) A PERSON IS AGGRIEVED FOR PURPOSES OF BRINGING AND MAINTAINING  
35 AN APPEAL IN ACCORDANCE WITH THIS SECTION UNDER THE FOLLOWING  
36 CIRCUMSTANCES:

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

1 (I) DENIED; OR

2 (II) ISSUED WITH CONDITIONS TO WHICH THE APPLICANT  
3 OBJECTS.

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

10 (3) AN ORGANIZATION THAT IS INCORPORATED IN THIS STATE OR THAT  
11 CONDUCTS SUBSTANTIAL ACTIVITIES IN THIS STATE IS AGGRIEVED IF IT PRESENTS  
12 COMPETENT AND MATERIAL EVIDENCE THAT A MEMBER OF THE ORGANIZATION:

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

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

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

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

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

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

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

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

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

1 (D) AN APPEAL FILED IN ACCORDANCE WITH THIS SECTION IS LIMITED TO  
2 THE RECORD ESTABLISHED UNDER §§ 1-604 AND 1-605 OF THIS SUBTITLE AND §  
3 10-222(F) OF THE STATE GOVERNMENT ARTICLE.

4 (E) AN APPEAL FILED UNDER THIS SECTION SHALL BE FILED AND DECIDED  
5 IN ACCORDANCE WITH § 10-222 OF THE STATE GOVERNMENT ARTICLE AS IF THE  
6 APPEAL WERE MADE FROM A FINAL DECISION IN A CONTESTED CASE.

7 (F) (1) WITHIN 10 DAYS AFTER RECEIVING AN APPEAL, THE DEPARTMENT  
8 SHALL PREPARE THE RECORD WHICH SHALL CONSIST OF:

9 (I) ALL MATERIALS ON WHICH THE DEPARTMENT RELIED IN  
10 MAKING THE FINAL DECISION; AND

11 (II) ALL WRITTEN OR TRANSCRIBED PUBLIC COMMENTS MADE TO  
12 THE DEPARTMENT DURING ANY PERIOD FOR PUBLIC COMMENT.

13 (2) INSTEAD OF MAKING COPIES OF MATERIALS TO PLACE IN THE  
14 RECORD, THE DEPARTMENT MAY LIST MATERIALS ON WHICH IT RELIED IF THE  
15 MATERIALS ARE MADE AVAILABLE TO THE PARTY FILING THE APPEAL.

16 (G) ANY PARTY TO THE APPEAL MAY SEEK PERMISSION TO SUPPLEMENT THE  
17 RECORD AS PROVIDED IN § 10-222(F) OF THE STATE GOVERNMENT ARTICLE.

18 5-204.

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

23 (II) THE PROVISIONS OF THIS SECTION AND OF §§ 5-205 AND 5-206  
24 OF THIS SUBTITLE SHALL APPLY TO ANY PERMIT ISSUED BY THE DEPARTMENT  
25 UNDER TITLE 5, SUBTITLES 5 AND 9 AND TITLES 14, 15, AND 16 OF THIS ARTICLE.

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

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

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

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

35 (2) FOR PURPOSES OF PARAGRAPH (1)(I) OF THIS SUBSECTION, A PERSON  
36 IS AGGRIEVED UNDER THE FOLLOWING CIRCUMSTANCES:

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

- 3 1. DENIED; OR  
4 2. ISSUED WITH CONDITIONS TO WHICH THE APPLICANT  
5 OBJECTS.

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

12 (III) AN ORGANIZATION THAT IS INCORPORATED IN THIS STATE OR  
13 THAT CONDUCTS SUBSTANTIAL ACTIVITIES IN THIS STATE IS AGGRIEVED IF IT  
14 PRESENTS COMPETENT AND MATERIAL EVIDENCE THAT A MEMBER OF THE  
15 ORGANIZATION:

- 16 1. SATISFIES THE REQUIREMENTS OF SUBPARAGRAPH (V)  
17 OF THIS PARAGRAPH; AND  
18 2. WAS A MEMBER OF THE ORGANIZATION AT THE TIME THE  
19 FIRST NOTICE OF APPLICATION FOR A PERMIT WAS PUBLISHED.

20 (IV) A PERSON WHOSE PROPERTY IS ADJOINING, CONFRONTING, OR  
21 NEARBY TO THE PROPERTY THAT IS THE SUBJECT OF THE PERMITTED ACTIVITY IS  
22 PRESUMED TO BE AGGRIEVED, UNLESS IT IS ESTABLISHED BY A PREPONDERANCE  
23 OF THE COMPETENT AND MATERIAL EVIDENCE THAT THE PERSON DOES NOT  
24 SATISFY THE REQUIREMENTS OF SUBPARAGRAPHS (V) AND (VI) OF THIS PARAGRAPH.

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

29 1. THE GRANTING OF THE PERMIT IN ACCORDANCE WITH  
30 THE FINAL DETERMINATION WOULD BE INJURIOUS TO:

- 31 A. THE PERSON'S HEALTH OR PROPERTY; OR  
32 B. PLANT OR ANIMAL LIFE ON THE PERSON'S PROPERTY OR  
33 ON ABUTTING PUBLIC PROPERTY; AND

34 2. THE INJURED INTEREST IS WITHIN THE ZONE OF  
35 INTERESTS SOUGHT TO BE PROTECTED BY THE PROVISIONS OF THIS ARTICLE  
36 UNDER WHICH THE PERMIT BEING CHALLENGED IS ISSUED.

1 (VI) THE REQUIREMENTS OF SUBPARAGRAPH (V) OF THIS  
2 PARAGRAPH ARE SATISFIED ON A SHOWING THAT THE INJURY IS ACTUAL OR  
3 THREATENED.

4 5-205.

5 (A) ON REQUEST OF THE DEPARTMENT OR ANY OTHER PARTY TO A  
6 CONTESTED CASE, THE ADMINISTRATIVE LAW JUDGE SHALL ORDER A PARTY WHO  
7 REQUESTED A CONTESTED CASE HEARING TO PROVIDE COMPETENT AND MATERIAL  
8 EVIDENCE THAT THE PARTY IS AGGRIEVED AS ALLEGED IN THEIR REQUEST AND IN  
9 ACCORDANCE WITH § 5-204 (G) OF THIS SUBTITLE.

10 (B) IF ANY PARTY IS NOT ABLE TO PROVIDE COMPETENT AND MATERIAL  
11 EVIDENCE IN RESPONSE TO THE ORDER, THE ADMINISTRATIVE LAW JUDGE SHALL  
12 MAKE A SUMMARY DISPOSITION DISMISSING THE REQUEST OF THAT PARTY AND  
13 EXCLUDING THAT PARTY FROM FURTHER PARTICIPATION AS A PARTY IN THE  
14 CONTESTED CASE HEARING.

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

19 5-206.

20 (A) IN ADDITION TO ANY RIGHT TO JUDICIAL REVIEW PROVIDED BY THIS  
21 ARTICLE OR ANY OTHER PROVISION OF LAW, A PERSON MAY APPEAL A FINAL  
22 DECISION BY THE DEPARTMENT TO GRANT A PERMIT IF THE APPEAL IS FILED IN  
23 ACCORDANCE WITH THIS SECTION.

24 (B) (1) A PERSON IS AGGRIEVED FOR PURPOSES OF BRINGING AND  
25 MAINTAINING AN APPEAL IN ACCORDANCE WITH THIS SECTION UNDER THE  
26 CIRCUMSTANCES DESCRIBED IN THIS SUBSECTION.

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

29 (I) DENIED; OR

30 (II) ISSUED WITH CONDITIONS TO WHICH THE APPLICANT  
31 OBJECTS.

32 (3) A COUNTY OR MUNICIPAL CORPORATION IS AGGRIEVED IF IT  
33 PRESENTS COMPETENT AND MATERIAL EVIDENCE THAT A FINAL DETERMINATION  
34 TO ISSUE A PERMIT IS FOR A FACILITY WHICH WILL BE LOCATED WITHIN THE  
35 GEOGRAPHIC BOUNDARIES OF THE COUNTY OR MUNICIPAL CORPORATION AND  
36 THAT AT LEAST ONE RESIDENT OF THE COUNTY OR MUNICIPAL CORPORATION IS  
37 AGGRIEVED IN ACCORDANCE WITH THIS PARAGRAPH.

1 (4) AN ORGANIZATION THAT IS INCORPORATED IN THIS STATE OR THAT  
2 CONDUCTS SUBSTANTIAL ACTIVITIES IN THIS STATE IS AGGRIEVED IF IT PRESENTS  
3 COMPETENT AND MATERIAL EVIDENCE THAT A MEMBER OF THE ORGANIZATION:

4 (I) SATISFIES THE REQUIREMENTS OF PARAGRAPH (6) OF THIS  
5 SUBSECTION; AND

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

8 (5) A PERSON WHOSE PROPERTY IS ADJOINING, CONFRONTING, OR  
9 NEARBY TO THE PROPERTY THAT IS THE SUBJECT OF THE PERMITTED ACTIVITY IS  
10 PRESUMED TO BE AGGRIEVED, UNLESS IT IS ESTABLISHED BY A PREPONDERANCE  
11 OF THE COMPETENT AND MATERIAL EVIDENCE THAT THE PERSON DOES NOT  
12 SATISFY THE REQUIREMENTS OF PARAGRAPHS (6) AND (7) OF THIS SUBSECTION.

13 (6) A PERSON IS AGGRIEVED, REGARDLESS OF WHETHER THE PERSON  
14 POSSESSES A SPECIAL INTEREST DIFFERENT FROM THE INTEREST POSSESSED  
15 GENERALLY BY OTHER RESIDENTS OF THIS STATE, IF THE PERSON PRESENTS  
16 COMPETENT AND MATERIAL EVIDENCE THAT:

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

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

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

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

25 (7) THE REQUIREMENTS OF PARAGRAPH (6) OF THIS SUBSECTION ARE  
26 SATISFIED ON A SHOWING THAT THE INJURY IS ACTUAL OR THREATENED.

27 (C) AN APPEAL FILED IN ACCORDANCE WITH THIS SECTION IS LIMITED TO  
28 THE RECORD ESTABLISHED UNDER § 5-205 OF THIS SUBTITLE AND § 10-222(F) OF THE  
29 STATE GOVERNMENT ARTICLE.

30 (D) AN APPEAL FILED UNDER THIS SECTION SHALL BE FILED AND DECIDED  
31 IN ACCORDANCE WITH § 10-222(F) OF THE STATE GOVERNMENT ARTICLE AS IF THE  
32 APPEAL WERE MADE FROM A FINAL DECISION IN A CONTESTED CASE.

33 (E) (1) WITHIN 10 DAYS AFTER RECEIVING AN APPEAL, THE DEPARTMENT  
34 SHALL PREPARE THE RECORD WHICH SHALL CONSIST OF:

35 (I) ALL MATERIALS ON WHICH THE DEPARTMENT RELIED IN  
36 MAKING THE FINAL DECISION; AND

1 (II) ALL WRITTEN OR TRANSCRIBED PUBLIC COMMENTS MADE TO  
2 THE DEPARTMENT DURING ANY PERIOD FOR PUBLIC COMMENT.

3 (2) INSTEAD OF MAKING COPIES OF MATERIALS TO PLACE IN THE  
4 RECORD, THE DEPARTMENT MAY LIST MATERIALS ON WHICH IT RELIED IF THE  
5 MATERIALS ARE MADE AVAILABLE TO THE PARTY FILING THE APPEAL.

6 (F) ANY PARTY TO THE APPEAL MAY SEEK PERMISSION TO SUPPLEMENT THE  
7 RECORD AS PROVIDED IN § 10-222(F) OF THE STATE GOVERNMENT ARTICLE.

8 SECTION 2. AND BE IT FURTHER ENACTED, That the provisions set forth in  
9 §§ 1-605(b), 1-607, and 5-206 of the Environment Article and the changes to §  
10 5-204(g) of the Environment Article shall apply only to final permit decisions made  
11 on or after the date of enactment of this Act.

12 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
13 October 1, 2001.