
By: **Delegate Guns**

Introduced and read first time: March 2, 2001

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Air Quality Control Permits - Public Participation - Judicial Review**

3 FOR the purpose of altering the opportunities for public participation for certain air
4 quality control permits issued by the Department of the Environment; requiring
5 the Department to provide an opportunity for certain comments and public
6 meetings before certain permits are issued; prohibiting the Department from
7 requiring a contested case hearing for certain permits; requiring the
8 Department to consolidate certain procedures and requirements for certain air
9 quality control permits; providing that certain permits are subject to judicial
10 review at the request of certain persons; providing standards for judicial review
11 of certain permits; and generally relating to air quality control permits and
12 public participation.

13 BY repealing and reenacting, with amendments,
14 Article - Environment
15 Section 1-601 and 2-404
16 Annotated Code of Maryland
17 (1996 Replacement Volume and 2000 Supplement)

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

20 **Article - Environment**

21 1-601.

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

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

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

1 [(3)] (2) Permits to discharge pollutants to waters of the State issued
2 pursuant to § 9-323 of this article;

3 [(4)] (3) Permits to install, materially alter or materially extend a
4 structure used for storage or distribution of any type of sewage sludge issued,
5 renewed, or amended pursuant to § 9-234.1 or § 9-238 of this article;

6 [(5)] (4) Permits to own, operate, establish or maintain a controlled
7 hazardous substance facility issued pursuant to § 7-232 of this article;

8 [(6)] (5) Permits to own, operate, or maintain a hazardous material
9 facility issued pursuant to § 7-103 of this article; and

10 [(7)] (6) Permits to own, operate, establish or maintain a low-level
11 nuclear waste facility issued pursuant to § 7-233 of this article.

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

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

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

23 2-404.

24 (a) This section applies to the following activities:

25 (1) Construction of a new source;

26 (2) Replacement of components of an existing permitted source, if the
27 fixed capital cost of the replacement components exceeds one-half of the fixed capital
28 cost that would be required to construct a new source comparable in process to the
29 existing source; and

30 (3) Modification of an existing permitted source by making a physical or
31 operational change to the source that will result in a significant net increase in
32 emissions of any pollutant from that source.

33 (b) (1) Before accepting an application for a permit subject to subsection (c)
34 of this section, the Department shall require the applicant to submit documentation:

35 (i) That demonstrates that the proposal has been approved by the
36 local jurisdiction for all zoning and land use requirements; or

1 (ii) That the source meets all applicable zoning and land use
2 requirements.

3 (2) Paragraph (1) of this subsection does not apply to any application for
4 a permit to construct at an existing source unless the existing source is a
5 nonconforming use.

6 (c) The Department shall comply with the provisions in subsection (d) of this
7 section before issuing a permit for the activities listed in subsection (a) of this section
8 at:

9 (1) Any source which is required to obtain a permit to operate under
10 regulations adopted under this subtitle;

11 (2) Any source which is subject to federal standards under 40 CFR Part
12 60 (New Source Performance Standards), 40 CFR Part 61 (National Emission
13 Standards for Hazardous Air Pollutants), or 40 CFR 52.21 (Prevention of Significant
14 Deterioration); or

15 (3) Any source that will, after control, discharge 25 tons or more per year
16 of a pollutant regulated under this title in the areas of Baltimore City designated by
17 the United States Post Office as zip code numbers 21225, 21226, and 21230.

18 (d) (1) Before issuing a permit subject to subsection (c) of this section, the
19 Department shall:

20 (i) [Comply with the provisions of Title 1, Subtitle 6 of this article]
21 PROVIDE AN OPPORTUNITY FOR WRITTEN COMMENT AND AN OPPORTUNITY FOR A
22 PUBLIC MEETING TO RECEIVE PUBLIC COMMENT; and

23 (ii) Conduct any public hearing required by [Title 1, Subtitle 6 of
24 this article] THIS SECTION in the county in which the proposed source is located.

25 (2) In addition to the requirements under paragraph (1) of this
26 subsection, before issuing a permit to construct a source described in subsection (c)(3)
27 of this section, the Department shall require at the expense of the applicant the
28 preparation of an ambient air quality impact analysis regarding the proposed
29 construction.

30 (3) THE DEPARTMENT MAY NOT REQUIRE A CONTESTED CASE HEARING
31 IN CONNECTION WITH A PERMIT ISSUED UNDER THIS SECTION.

32 (E) THE DEPARTMENT SHALL CONSOLIDATE ALL PROCEDURES AND
33 REQUIREMENTS FOR AN AIR QUALITY CONTROL PERMIT TO CONSTRUCT A FACILITY
34 AND AN AIR QUALITY CONTROL PERMIT TO OPERATE A FACILITY, SO THAT AN AIR
35 QUALITY CONTROL PERMIT TO CONSTRUCT A FACILITY SHALL ALSO FUNCTION AS A
36 PERMIT TO OPERATE THE FACILITY, INCLUDING A PERMIT TO OPERATE UNDER TITLE
37 V OF THE FEDERAL CLEAN AIR ACT.

1 (F) A PERMIT ISSUED UNDER THIS SECTION, INCLUDING A FINAL DECISION
2 OF THE DEPARTMENT ON THE ISSUANCE OF A PERMIT TO OPERATE UNDER TITLE V
3 OF THE FEDERAL CLEAN AIR ACT, IS SUBJECT TO JUDICIAL REVIEW AT THE REQUEST
4 OF A PETITIONER WHO:

5 (1) WOULD HAVE STANDING TO CHALLENGE A PERMIT UNDER THE
6 EQUIVALENT FEDERAL LAW; AND

7 (2) PARTICIPATED IN A PUBLIC PARTICIPATION PROCESS THROUGH
8 SUBMISSION OF WRITTEN OR ORAL COMMENTS, UNLESS AN OPPORTUNITY FOR
9 PUBLIC PARTICIPATION WAS NOT REQUIRED BY LAW.

10 (G) JUDICIAL REVIEW UNDER THIS SECTION SHALL BE ON THE
11 ADMINISTRATIVE RECORD BEFORE THE DEPARTMENT, AND SHALL BE LIMITED TO
12 OBJECTIONS RAISED DURING THE PUBLIC COMMENT PERIOD, UNLESS THE
13 PETITIONER DEMONSTRATES THAT THE GROUNDS FOR THE OBJECTION:

14 (1) WERE NOT REASONABLY ASCERTAINABLE DURING THE COMMENT
15 PERIOD; OR

16 (2) AROSE AFTER THE COMMENT PERIOD.

17 [(e)] (H) The provisions of this section do not apply to any permit to construct
18 control equipment on an existing source or to any permit to operate.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 October 1, 2001.