
By: **Delegate Guns**

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Assigned to: Rules and Executive Nominations

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Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: March 21, 2001

CHAPTER _____

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 BY adding to
19 Article - Environment
20 Section 2-404.1
21 Annotated Code of Maryland
22 (1996 Replacement Volume and 2000 Supplement)

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

3 **Article - Environment**

4 1-601.

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

7 (1) ~~At~~ EXCEPT AS PROVIDED IN § 2-404.1 OF THIS ARTICLE, AIR quality
8 control permits to construct subject to § 2-404 of this article;

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

12 (3) ~~(2)~~ Permits to discharge pollutants to waters of the State issued
13 pursuant to § 9-323 of this article;

14 (4) ~~(3)~~ Permits to install, materially alter or materially extend a
15 structure used for storage or distribution of any type of sewage sludge issued,
16 renewed, or amended pursuant to § 9-234.1 or § 9-238 of this article;

17 (5) ~~(4)~~ Permits to own, operate, establish or maintain a controlled
18 hazardous substance facility issued pursuant to § 7-232 of this article;

19 (6) ~~(5)~~ Permits to own, operate, or maintain a hazardous material
20 facility issued pursuant to § 7-103 of this article; and

21 (7) ~~(6)~~ Permits to own, operate, establish or maintain a low-level
22 nuclear waste facility issued pursuant to § 7-233 of this article.

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

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

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

34 2-404.

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

1 (1) Construction of a new source;

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

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

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

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

13 (ii) That the source meets all applicable zoning and land use
14 requirements.

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

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

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

23 (2) Any source which is subject to federal standards under 40 CFR Part
24 60 (New Source Performance Standards), 40 CFR Part 61 (National Emission
25 Standards for Hazardous Air Pollutants), or 40 CFR 52.21 (Prevention of Significant
26 Deterioration); or

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

30 (d) (1) Before issuing a permit subject to subsection (c) of this section, the
31 Department shall, EXCEPT AS PROVIDED IN § 2-404.1 OF THIS SUBTITLE:

32 (i) ~~{Comply with the provisions of Title 1, Subtitle 6 of this article}~~
33 ~~PROVIDE AN OPPORTUNITY FOR WRITTEN COMMENT AND AN OPPORTUNITY FOR A~~
34 ~~PUBLIC MEETING TO RECEIVE PUBLIC COMMENT~~; and

35 (ii) Conduct any public hearing required by ~~{Title 1, Subtitle 6 of~~
36 ~~this article}~~ ~~THIS SECTION~~ in the county in which the proposed source is located.

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

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

8 ~~(E) THE DEPARTMENT SHALL CONSOLIDATE ALL PROCEDURES AND~~
 9 ~~REQUIREMENTS FOR AN AIR QUALITY CONTROL PERMIT TO CONSTRUCT A FACILITY~~
 10 ~~AND AN AIR QUALITY CONTROL PERMIT TO OPERATE A FACILITY, SO THAT AN AIR~~
 11 ~~QUALITY CONTROL PERMIT TO CONSTRUCT A FACILITY SHALL ALSO FUNCTION AS A~~
 12 ~~PERMIT TO OPERATE THE FACILITY, INCLUDING A PERMIT TO OPERATE UNDER TITLE~~
 13 ~~V OF THE FEDERAL CLEAN AIR ACT.~~

14 ~~(F) A PERMIT ISSUED UNDER THIS SECTION, INCLUDING A FINAL DECISION~~
 15 ~~OF THE DEPARTMENT ON THE ISSUANCE OF A PERMIT TO OPERATE UNDER TITLE V~~
 16 ~~OF THE FEDERAL CLEAN AIR ACT, IS SUBJECT TO JUDICIAL REVIEW AT THE REQUEST~~
 17 ~~OF A PETITIONER WHO:~~

18 ~~(1) WOULD HAVE STANDING TO CHALLENGE A PERMIT UNDER THE~~
 19 ~~EQUIVALENT FEDERAL LAW; AND~~

20 ~~(2) PARTICIPATED IN A PUBLIC PARTICIPATION PROCESS THROUGH~~
 21 ~~SUBMISSION OF WRITTEN OR ORAL COMMENTS, UNLESS AN OPPORTUNITY FOR~~
 22 ~~PUBLIC PARTICIPATION WAS NOT REQUIRED BY LAW.~~

23 ~~(G) JUDICIAL REVIEW UNDER THIS SECTION SHALL BE ON THE~~
 24 ~~ADMINISTRATIVE RECORD BEFORE THE DEPARTMENT, AND SHALL BE LIMITED TO~~
 25 ~~OBJECTIONS RAISED DURING THE PUBLIC COMMENT PERIOD, UNLESS THE~~
 26 ~~PETITIONER DEMONSTRATES THAT THE GROUNDS FOR THE OBJECTION:~~

27 ~~(1) WERE NOT REASONABLY ASCERTAINABLE DURING THE COMMENT~~
 28 ~~PERIOD; OR~~

29 ~~(2) AROSE AFTER THE COMMENT PERIOD.~~

30 ~~(e)}~~ ~~(H) The provisions of this section do not apply to any permit to construct~~
 31 ~~control equipment on an existing source or to any permit to operate.~~

32 2-404.1.

33 (A) A FINAL DECISION OF THE DEPARTMENT ON THE ISSUANCE, RENEWAL,
 34 OR REVISION OF A PERMIT TO OPERATE UNDER TITLE V OF THE FEDERAL CLEAN AIR
 35 ACT, OR A PERMIT TO CONSTRUCT A FACILITY ISSUED TO AN APPLICANT THAT IS
 36 REQUIRED TO OBTAIN A PERMIT TO OPERATE UNDER TITLE V OF THE FEDERAL
 37 CLEAN AIR ACT, IS SUBJECT TO JUDICIAL REVIEW AT THE REQUEST OF A PETITIONER
 38 WHO:

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

3 (2) IF AN OPPORTUNITY FOR PUBLIC PARTICIPATION WAS REQUIRED BY
4 LAW, PARTICIPATED IN THE PUBLIC PARTICIPATION PROCESS THROUGH
5 SUBMISSION OF WRITTEN OR ORAL COMMENTS.

6 (B) JUDICIAL REVIEW UNDER THIS SECTION SHALL BE ON THE
7 ADMINISTRATIVE RECORD BEFORE THE DEPARTMENT, AND SHALL BE LIMITED TO
8 OBJECTIONS RAISED DURING THE PUBLIC COMMENT PERIOD, UNLESS THE
9 PETITIONER DEMONSTRATES THAT THE GROUNDS FOR THE OBJECTION:

10 (1) WERE NOT REASONABLY ASCERTAINABLE DURING THE COMMENT
11 PERIOD; OR

12 (2) AROSE AFTER THE COMMENT PERIOD.

13 (C) (1) BEFORE ISSUING AN OPERATING PERMIT SUBJECT TO THIS
14 SECTION, THE DEPARTMENT SHALL PROVIDE AN OPPORTUNITY FOR WRITTEN
15 COMMENT AND AN OPPORTUNITY FOR A PUBLIC MEETING TO RECEIVE PUBLIC
16 COMMENT ON THE DRAFT PERMIT.

17 (2) BEFORE ISSUING A PERMIT TO CONSTRUCT TO AN APPLICANT THAT
18 IS REQUIRED TO OBTAIN A PERMIT TO OPERATE UNDER TITLE V OF THE FEDERAL
19 CLEAN AIR ACT, THE DEPARTMENT SHALL COMPLY WITH THE PUBLIC NOTICE AND
20 MEETING REQUIREMENTS IN § 2-404 OF THIS SUBTITLE.

21 (D) THE DEPARTMENT MAY NOT REQUIRE AN OPPORTUNITY FOR A
22 CONTESTED CASE HEARING IN CONNECTION WITH A PERMIT SUBJECT TO THIS
23 SECTION.

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