

HOUSE BILL 5
EMERGENCY BILL

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M3

2002 Regular Session
2lr1154
CF 2lr0131

(PRE-FILED)

By: ~~Delegate Hurson~~ Delegates Hurson, Taylor, McIntosh, Arnick, Busch, Carlson, Conway, Dewberry, Doory, Harrison, Hixson, Howard, James, Kopp, Menes, Montague, Rawlings, Rosenberg, Vallario, Wood, Barkley, Billings, Bobo, Bohanan, Cane, Clagett, Cole, C. Davis, D. Davis, Dembrow, Donoghue, Finifter, Franchot, Frush, Goldwater, Hammen, Heller, Hubbard, Klausmeier, Love, Mandel, Minnick, Mohorovic, Nathan-Pulliam, Oaks, Owings, Pendergrass, Petzold, Pitkin, Redmer, Rosso, Sher, Stern, Stull, and Weir, Hecht, Conroy, DeCarlo, Malone, and Carlson

Requested: November 15, 2001

Introduced and read first time: January 9, 2002

Assigned to: Environmental Matters

Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: January 18, 2002

CHAPTER _____

1 AN ACT concerning

2 **Environmental Standing - Judicial Review - Title V Operating Permits**

3 FOR the purpose of expanding who has standing to seek judicial review of certain
4 final decisions by the Department of the Environment on certain air quality
5 operating permits; specifying how the judicial review shall be conducted;
6 specifying where the judicial review shall be conducted; making this Act an
7 emergency measure; and generally relating to judicial review of final decisions
8 on certain air quality operating permits.

9 BY adding to

10 Article - Environment

11 Section 2-404.1

12 Annotated Code of Maryland

13 (1996 Replacement Volume and 2001 Supplement)

1 Preamble

2 WHEREAS, On December 3, 2001 the Department of the Environment lost
3 federal approval of its Clean Air Act Title V air quality permit program; and

4 WHEREAS, The General Assembly finds that, for the Department to be able to
5 implement an approved State Title V air quality permit program, the standing
6 requirements for judicial review of operating permits issued pursuant to Title V of the
7 Clean Air Act must be broadened; and

8 WHEREAS, The General Assembly declares that this Act is intended to expand
9 standing for the Title V air quality operating permit program without creating any
10 precedent for any other permit program; now, therefore,

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

13 **Article - Environment**

14 2-404.1.

15 (A) EXCEPT FOR AN APPLICANT WHO ELECTS TO PROCEED UNDER
16 SUBSECTION (D) OF THIS SECTION, A FINAL DECISION BY THE DEPARTMENT ON THE
17 ISSUANCE, RENEWAL, OR REVISION OF AN OPERATING PERMIT ISSUED PURSUANT
18 TO TITLE V OF THE FEDERAL CLEAN AIR ACT AMENDMENTS OF 1990 IS SUBJECT TO
19 JUDICIAL REVIEW BY ANY PERSON WHO:

20 (1) MEETS THE THRESHOLD STANDING REQUIREMENTS UNDER
21 FEDERAL CONSTITUTIONAL LAW; AND

22 (2) PARTICIPATED IN A PUBLIC PARTICIPATION PROCESS THROUGH THE
23 SUBMISSION OF WRITTEN OR ORAL COMMENTS, UNLESS AN OPPORTUNITY FOR
24 PUBLIC PARTICIPATION WAS NOT REQUIRED BY STATUTE OR REGULATION.

25 (B) JUDICIAL REVIEW SHALL BE ON THE ADMINISTRATIVE RECORD BEFORE
26 THE DEPARTMENT AND LIMITED TO OBJECTIONS RAISED DURING THE PUBLIC
27 COMMENT PERIOD, UNLESS THE PETITIONER DEMONSTRATES:

28 (1) THAT THE OBJECTIONS WERE NOT REASONABLY ASCERTAINABLE
29 DURING THE COMMENT PERIOD; OR

30 (2) THAT GROUNDS FOR THE OBJECTIONS AROSE AFTER THE COMMENT
31 PERIOD.

32 (C) UNLESS OTHERWISE REQUIRED BY STATUTE, A PETITION FOR JUDICIAL
33 REVIEW BY A PERSON WHO MEETS THE REQUIREMENTS OF SUBSECTION (A) OF THIS
34 SECTION SHALL BE FILED WITH THE CIRCUIT COURT FOR THE COUNTY IN WHICH
35 ANY PARTY RESIDES OR HAS A PRINCIPAL PLACE OF BUSINESS.

1 (D) (1) AN APPLICANT FOR AN AIR QUALITY OPERATING PERMIT MAY SEEK
2 JUDICIAL REVIEW IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE
3 GOVERNMENT ARTICLE.

4 (2) EXCEPT FOR AN APPLICANT AS DESCRIBED IN PARAGRAPH (1) OF
5 THIS SUBSECTION, A PERSON IS NOT ENTITLED TO A CONTESTED CASE HEARING
6 REGARDING TITLE V OPERATING PERMITS.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency
8 measure, is necessary for the immediate preservation of the public health or safety,
9 has been passed by a yea and nay vote supported by three-fifths of all the members
10 elected to each of the two Houses of the General Assembly, and shall take effect from
11 the date it is enacted.