
By: **Delegates Hubbard and Billings**
Introduced and read first time: January 30, 2002
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 2001 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 2001 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) (1) A person may request a contested case hearing to appeal a final
33 determination if the person makes factual allegations with sufficient particularity to
34 demonstrate that:

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

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

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

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

5 (2) (I) FOR PURPOSES OF PARAGRAPH (1) OF THIS SUBSECTION, A
6 PERSON IS AGGRIEVED UNDER THE CIRCUMSTANCES DESCRIBED IN THIS
7 PARAGRAPH.

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

10 1. DENIED; OR

11 2. ISSUED WITH CONDITIONS TO WHICH THE APPLICANT
12 OBJECTS.

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

19 (IV) AN ORGANIZATION THAT IS INCORPORATED IN THIS STATE OR
20 THAT CONDUCTS SUBSTANTIAL ACTIVITIES IN THIS STATE IS AGGRIEVED IF IT
21 PRESENTS COMPETENT AND MATERIAL EVIDENCE THAT A MEMBER OF THE
22 ORGANIZATION:

23 1. SATISFIES THE REQUIREMENTS OF SUBPARAGRAPH (VI)
24 OF THIS PARAGRAPH; AND

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

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

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

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

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

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

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

7 (VII) THE REQUIREMENTS OF SUBPARAGRAPH (VI) OF THIS
8 PARAGRAPH ARE SATISFIED ON A SHOWING THAT THE INJURY IS ACTUAL OR
9 THREATENED.

10 (b) A party requesting a contested case hearing shall submit a written request
11 for adjudication within 15 days after publication of a notice of final determination.

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

16 (d) A party may not, in a contested case hearing, challenge a facility's
17 compliance with zoning and land use requirements or conformity with a county plan
18 issued under Title 9, Subtitle 5 of this article. However, nothing in this subtitle shall
19 prevent a party from challenging whether the Department has complied with §§
20 2-404(b)(1)(ii) and 9-210(a)(3) of this article, when applicable, nor does this subtitle
21 prevent a party from contesting the compliance of the facility with zoning and land
22 use or county plan requirements in any proceeding brought in accordance with and
23 under any applicable local laws.

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

26 1-606.

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

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

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

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

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

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

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

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

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

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

33 [(e)] (F) (1) When a summary disposition under any of the provisions of this
34 section does not dispose of the entire action and a contested case hearing is necessary,
35 the Department official or administrative law judge issuing the summary disposition,
36 on the basis of the request and any other pleadings and, if necessary, after
37 interrogating counsel on the record, may enter an order specifying the issues or facts
38 that are not in genuine dispute.

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

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

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

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

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

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

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

19 1-608.

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) A PERSON IS AGGRIEVED FOR PURPOSES OF BRINGING AND MAINTAINING
25 AN APPEAL IN ACCORDANCE WITH THIS SECTION UNDER THE FOLLOWING
26 CIRCUMSTANCES:

27 (1) 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 (2) 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 (3) 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 (5) 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 (4) 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 (5) AND (6) OF THIS SUBSECTION.

13 (5) 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 (6) THE REQUIREMENTS OF PARAGRAPH (5) 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 §§ 1-604 AND 1-605 OF THIS SUBTITLE AND §
29 10-222(F) OF THE STATE GOVERNMENT ARTICLE.

30 (D) AN APPEAL FILED UNDER THIS SECTION SHALL BE FILED AND DECIDED
31 IN ACCORDANCE WITH § 10-222 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 5-204.

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

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

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

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

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

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

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

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

29 1. DENIED; OR

30 2. ISSUED WITH CONDITIONS TO WHICH THE APPLICANT
31 OBJECTS.

32 (II) 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

1 THAT AT LEAST ONE RESIDENT OF THE COUNTY OR MUNICIPAL CORPORATION IS
2 AGGRIEVED IN ACCORDANCE WITH THIS PARAGRAPH.

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

7 1. SATISFIES THE REQUIREMENTS OF SUBPARAGRAPH (V)
8 OF THIS PARAGRAPH; AND

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

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

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

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

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

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

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

28 (VI) THE REQUIREMENTS OF SUBPARAGRAPH (V) OF THIS
29 PARAGRAPH ARE SATISFIED ON A SHOWING THAT THE INJURY IS ACTUAL OR
30 THREATENED.

31 5-205.

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

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

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

10 5-206.

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

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

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

20 (I) DENIED; OR

21 (II) ISSUED WITH CONDITIONS TO WHICH THE APPLICANT
22 OBJECTS.

23 (3) A COUNTY OR MUNICIPAL CORPORATION IS AGGRIEVED IF IT
24 PRESENTS COMPETENT AND MATERIAL EVIDENCE THAT A FINAL DETERMINATION
25 TO ISSUE A PERMIT IS FOR A FACILITY WHICH WILL BE LOCATED WITHIN THE
26 GEOGRAPHIC BOUNDARIES OF THE COUNTY OR MUNICIPAL CORPORATION AND
27 THAT AT LEAST ONE RESIDENT OF THE COUNTY OR MUNICIPAL CORPORATION IS
28 AGGRIEVED IN ACCORDANCE WITH THIS PARAGRAPH.

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

32 (I) SATISFIES THE REQUIREMENTS OF PARAGRAPH (6) OF THIS
33 SUBSECTION; AND

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

36 (5) A PERSON WHOSE PROPERTY IS ADJOINING, CONFRONTING, OR
37 NEARBY TO THE PROPERTY THAT IS THE SUBJECT OF THE PERMITTED ACTIVITY IS
38 PRESUMED TO BE AGGRIEVED, UNLESS IT IS ESTABLISHED BY A PREPONDERANCE

1 OF THE COMPETENT AND MATERIAL EVIDENCE THAT THE PERSON DOES NOT
2 SATISFY THE REQUIREMENTS OF PARAGRAPHS (6) AND (7) OF THIS SUBSECTION.

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

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

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

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

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

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

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

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

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

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

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

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

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

34 SECTION 2. AND BE IT FURTHER ENACTED, That the provisions set forth
35 in §§ 1-605(a), 1-607, and 5-206 of the Environment Article and the changes to §

1 5-204(g) of the Environment Article shall apply only to final permit decisions made
2 on or after the date of enactment of this Act.

3 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take
4 effect October 1, 2002.