

---

By: **Delegate Baldwin**

Introduced and read first time: March 4, 2002

Assigned to: Rules and Executive Nominations

---

A BILL ENTITLED

1 AN ACT concerning

2 **Environment - Ambient Air Quality - Class I Areas**

3 FOR the purpose of authorizing the Department of the Environment to represent the  
4 State when assessing certain demonstrations submitted by a certain person  
5 under a certain federal act alleging that emissions of a criteria pollutant from a  
6 proposed major new source or a major modification of a source will have an  
7 adverse impact on any specifically defined air quality-related value of certain  
8 areas; requiring the Department to concur in demonstrations under certain  
9 conditions; requiring a demonstration to be received and the Department to  
10 make a determination within a certain time; requiring the Department to  
11 provide certain written notice of determination; providing for an appeal of the  
12 Department's determination; defining certain terms; and generally relating to  
13 certain demonstrations alleging that emissions of a criteria pollutant from a  
14 proposed major new source or a major modification of a source will have an  
15 adverse impact in certain areas.

16 BY repealing and reenacting, with amendments,  
17 Article - Environment  
18 Section 2-101  
19 Annotated Code of Maryland  
20 (1996 Replacement Volume and 2001 Supplement)

21 BY adding to  
22 Article - Environment  
23 Section 2-407  
24 Annotated Code of Maryland  
25 (1996 Replacement Volume and 2001 Supplement)

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

1 **Article - Environment**

2 2-101.

3 (a) In this title the following words have the meanings indicated.

4 (b) "Air pollution" means the presence in the outdoor atmosphere of any  
5 substance that is present in such quantities and is of such duration that it:6 (1) May be predicted with reasonable certainty to be injurious to  
7 property or to human, plant, or animal life; or8 (2) Unreasonably interferes with the proper enjoyment of the property of  
9 others because of the emission of odors, solids, vapors, liquids, or gases.10 (c) (1) "AIR QUALITY-RELATED VALUE" MEANS A FEATURE OR PROPERTY  
11 OF A CLASS I FEDERAL AREA THAT WAS FUNDAMENTAL TO THE PURPOSE FOR  
12 WHICH THE AREA WAS ESTABLISHED OR DESIGNATED AND WHICH MAY BE  
13 AFFECTED BY AIR POLLUTION.14 (2) "AIR QUALITY-RELATED VALUE" INCLUDES FLORA, FAUNA,  
15 GEOLOGIC FEATURES, AND CULTURAL RESOURCES.16 (D) EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, "CLASS I AREA" MEANS  
17 AN AREA OF LAND THAT HAS BEEN DESIGNATED AS "CLASS I" UNDER SECTION 162 OF  
18 THE FEDERAL CLEAN AIR ACT.

19 (E) "Council" means the Air Quality Control Advisory Council.

20 [(d)] (F) "Emergency" means:

21 (1) A condition of such public gravity and urgency that it requires  
22 immediate response; or23 (2) A condition that is predicted to a reasonable degree of certainty to  
24 require immediate action to carry out the provisions of this title.25 [(e)] (G) (1) "Emission standard" means a requirement that limits the  
26 quantity, quality, rate, or concentration of emissions from a source.27 (2) "Emission standard" includes any requirement that relates to the  
28 operation or maintenance of a source to assure continuous emission reduction.29 [(f)] (H) "Person" includes any public or municipal corporation and any  
30 agency, bureau, department, or instrumentality of federal, State, or local government.31 [(g)] (I) "Political subdivision" means a county or municipal corporation of  
32 this State.33 [(h)] (J) "Regulated emissions" means the actual rate of emissions, in tons per  
34 year, of any registered pollutant emitted by a source, to be calculated using criteria

1 consistent with 40 CFR 70 (operating permit program), and subject to a limit of 4,000  
2 tons per year of any single pollutant.

3 (K) "SCIENTIFICALLY RELIABLE EVIDENCE" MEANS EVIDENCE SHOWN BY A  
4 METHODOLOGY THAT:

5 (1) IS GENERALLY ACCEPTED WITHIN THE RELEVANT SCIENTIFIC  
6 COMMUNITY;

7 (2) HAS BEEN SUBJECTED TO PEER REVIEW AND PUBLICATION;

8 (3) IS CAPABLE OF AND HAS BEEN TESTED;

9 (4) IS SUBJECT TO ESTABLISHED CONTROL STANDARDS OF  
10 PERFORMANCE; AND

11 (5) HAS A KNOWN OR POTENTIAL RATE OF ERROR THAT IS WITHIN A  
12 RANGE ACCEPTABLE TO THE RELEVANT SCIENTIFIC COMMUNITY.

13 [(i)] (L) "Source" means any person or property that contributes to air  
14 pollution.

15 2-407.

16 (A) THE DEPARTMENT MAY REPRESENT THE STATE AS PROVIDED IN THIS  
17 SECTION WHEN ASSESSING DEMONSTRATIONS SUBMITTED BY A FEDERAL LAND  
18 MANAGER UNDER SECTION 165(D)(2)(C)(II) OF THE FEDERAL CLEAN AIR ACT.

19 (B) WHEN A FEDERAL LAND MANAGER SENDS A WRITTEN DEMONSTRATION  
20 TO THE DEPARTMENT UNDER THE AUTHORITY OF SECTION 165(D)(2)(C)(II) OF THE  
21 FEDERAL CLEAN AIR ACT ALLEGING THAT EMISSIONS OF A CRITERIA POLLUTANT  
22 FROM A PROPOSED MAJOR NEW SOURCE OR A MAJOR MODIFICATION OF A SOURCE  
23 WILL HAVE AN ADVERSE IMPACT ON ANY SPECIFICALLY DEFINED AIR  
24 QUALITY-RELATED VALUE OF A CLASS I AREA, THE DEPARTMENT SHALL CONCUR IN  
25 THE DEMONSTRATION ONLY IF THE DEMONSTRATION ESTABLISHES THE  
26 FOLLOWING BY A PREPONDERANCE OF THE EVIDENCE:

27 (1) FOR AN AREA THAT WAS DESIGNATED AS CLASS I UNDER SECTION  
28 162 OF THE FEDERAL CLEAN AIR ACT, THAT EMISSIONS OF A SPECIFIC CRITERIA  
29 POLLUTANT FROM THE PROPOSED NEW SOURCE OR MODIFICATION WILL RESULT IN  
30 A SIGNIFICANT, ACTUAL ADVERSE IMPACT ON AN AIR QUALITY-RELATED VALUE  
31 THAT WAS FUNDAMENTAL TO THE PURPOSE FOR WHICH THE AREA WAS  
32 ESTABLISHED AND PRESERVED BY CONGRESS;

33 (2) FOR AN AREA THAT WAS REDESIGNATED AS CLASS I UNDER SECTION  
34 164 OF THE FEDERAL CLEAN AIR ACT, THAT EMISSIONS OF A CRITERIA POLLUTANT  
35 FROM THE PROPOSED NEW SOURCE OR MODIFICATION WILL RESULT IN A  
36 SIGNIFICANT, ACTUAL ADVERSE IMPACT ON AN AIR QUALITY-RELATED VALUE THAT  
37 WAS CONSIDERED AN IMPORTANT ATTRIBUTE IN THE DECISION TO REDESIGNATE  
38 THE AREA AS CLASS I; OR

1           (3)     THAT AN ADVERSE EFFECT OF ANY SPECIFIC POLLUTANT ON ANY  
2 SPECIFIC AIR QUALITY-RELATED VALUE IS ESTABLISHED BY SCIENTIFICALLY  
3 RELIABLE EVIDENCE THAT DEMONSTRATES THE ALLEGED ADVERSE EFFECT WILL  
4 RESULT FROM CONCENTRATIONS THAT ARE LIKELY TO OCCUR AS A RESULT OF  
5 EMISSIONS INTO THE AMBIENT AIR.

6     (C)     TO BE CONSIDERED BY THE DEPARTMENT, A DEMONSTRATION UNDER  
7 SUBSECTION (B) OF THIS SECTION MUST BE RECEIVED BY THE DEPARTMENT NO  
8 LATER THAN 30 DAYS AFTER THE MAILING OF WRITTEN NOTICE TO THE FEDERAL  
9 LAND MANAGER OF ANY PERMIT APPLICATION FOR A PROPOSED MAJOR SOURCE OR  
10 MAJOR MODIFICATION.

11    (D)     (1)     THE DEPARTMENT SHALL DETERMINE WITHIN 30 DAYS OF RECEIPT  
12 OF A DEMONSTRATION MADE UNDER SUBSECTION (B) OF THIS SECTION WHETHER  
13 THE DEMONSTRATION MEETS THE REQUIREMENTS OF THAT SUBSECTION.

14           (2)     THE DEPARTMENT SHALL NOTIFY THE FEDERAL LAND MANAGER  
15 AND THE OWNER OR OPERATOR OF THE PROPOSED NEW MAJOR STATIONARY  
16 SOURCE OR MODIFICATION WITHIN 10 DAYS, IN WRITING, OF THE DETERMINATION  
17 MADE UNDER PARAGRAPH (1) OF THIS SUBSECTION.

18    (E)     IF THE DEPARTMENT DETERMINES THAT THE PROPOSED NEW MAJOR  
19 SOURCE OR MAJOR MODIFICATION WILL HAVE A SIGNIFICANT ADVERSE IMPACT ON  
20 AN AIR QUALITY-RELATED VALUE, THE DEPARTMENT MAY NOT ISSUE A PERMIT  
21 UNLESS THE OWNER OR OPERATOR OF THE PROPOSED NEW MAJOR SOURCE OR  
22 MODIFICATION DEMONSTRATES TO THE DEPARTMENT THAT IT HAS MITIGATED  
23 THAT ADVERSE IMPACT BY OBTAINING ENFORCEABLE AND PERMANENT EMISSIONS  
24 REDUCTIONS TO OFFSET THE ADVERSE IMPACT.

25    (F)     THE OWNER OR OPERATOR OF THE PROPOSED NEW MAJOR SOURCE OR  
26 MAJOR MODIFICATION:

27           (1)     HAS THE BURDEN OF ESTABLISHING THE SUFFICIENCY OF THE  
28 MITIGATION UNDER SUBSECTION (E) OF THIS SECTION BY RELIABLE SCIENTIFIC  
29 EVIDENCE; AND

30           (2)     MAY APPEAL THE DEPARTMENT'S DETERMINATION UNDER THE  
31 PROVISIONS OF § 2-607 OF THIS ARTICLE.

32     SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
33 October 1, 2002.