

SENATE BILL 248
EMERGENCY BILL

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2002 Regular Session
2lr0131
CF HB 5

By: **The President (Administration) and Senators Pinsky and Van Hollen**

Introduced and read first time: January 18, 2002

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

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)

14 **Preamble**

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

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

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

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

1

Article - Environment

2 2-404.1.

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

8 (1) MEETS THE THRESHOLD STANDING REQUIREMENTS UNDER
9 FEDERAL CONSTITUTIONAL LAW; AND

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

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

16 (1) THAT THE OBJECTIONS WERE NOT REASONABLY ASCERTAINABLE
17 DURING THE COMMENT PERIOD; OR

18 (2) THAT GROUNDS FOR THE OBJECTIONS AROSE AFTER THE COMMENT
19 PERIOD.

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

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

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

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