

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,~~
Van Hollen, Mooney, and Stone**

Introduced and read first time: January 18, 2002

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 13, 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)

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

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

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

6 **Article - Environment**

7 2-404.1.

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

13 (1) MEETS THE THRESHOLD STANDING REQUIREMENTS UNDER
14 FEDERAL CONSTITUTIONAL LAW; AND

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

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

21 (1) THAT THE OBJECTIONS WERE NOT REASONABLY ASCERTAINABLE
22 DURING THE COMMENT PERIOD; OR

23 (2) THAT GROUNDS FOR THE OBJECTIONS AROSE AFTER THE COMMENT
24 PERIOD.

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

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

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

35 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency
36 measure, is necessary for the immediate preservation of the public health or safety,
37 has been passed by a ye and nay vote supported by three-fifths of all the members

1 elected to each of the two Houses of the General Assembly, and shall take effect from
2 the date it is enacted.