
By: **Delegate Hubbard**

Introduced and read first time: January 21, 2004

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Environment - Air Quality - New Source Review**

3 FOR the purpose of prohibiting the Department of the Environment from altering
4 certain regulations that existed on a certain date related to the review of a new
5 source that may cause or control emissions into the air unless certain conditions
6 are met; and generally relating to the new source review regulations.

7 BY repealing and reenacting, with amendments,
8 Article - Environment
9 Section 2-401
10 Annotated Code of Maryland
11 (1996 Replacement Volume and 2003 Supplement)

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

14 **Article - Environment**

15 2-401.

16 (A) Except as provided in SUBSECTIONS (B) THROUGH (D) OF THIS SECTION
17 AND § 2-402 of this subtitle, the Department may adopt regulations that require a
18 permit or registration before a person constructs, modifies, operates, or uses a source
19 that may cause or control emissions into the air.

20 (B) EXCEPT AS PROVIDED IN SUBSECTIONS (C) AND (D) OF THIS SECTION, IN
21 AMENDING OR REVISING ITS NEW SOURCE REVIEW REGULATIONS, THE
22 DEPARTMENT MAY NOT ALTER ANY OF THE FOLLOWING IF THEY EXIST IN
23 REGULATION ON DECEMBER 30, 2002:

24 (1) THE APPLICABILITY DETERMINATION FOR NEW SOURCE REVIEW;

25 (2) THE DEFINITION OF MODIFICATION, MAJOR MODIFICATION,
26 ROUTINE MAINTENANCE, REPAIR, OR REPLACEMENT;

1 (3) THE CALCULATION METHODOLOGY, THRESHOLDS, OR OTHER
2 PROCEDURES OF NEW SOURCE REVIEW; AND

3 (4) ANY OTHER REQUIREMENT OR DEFINITION OF THE NEW SOURCE
4 REVIEW REGULATIONS.

5 (C) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, THE
6 DEPARTMENT MAY ALTER AN ITEM SET FORTH IN SUBSECTION (B) OF THIS SECTION
7 IF THE AMENDMENT OR REVISION DOES NOT EXEMPT, RELAX, OR REDUCE ANY
8 REQUIREMENT RELATED TO:

9 (1) OBTAINING NEW SOURCE REVIEW OR OTHER PERMITS TO
10 CONSTRUCT, BEFORE BEGINNING CONSTRUCTION;

11 (2) USING BEST CONTROL TECHNOLOGY;

12 (3) CONDUCTING AN AIR QUALITY IMPACT ANALYSIS;

13 (4) CONDUCTING RECORDKEEPING, MONITORING, AND REPORTING, IF
14 THE AMENDMENT OR REVISION WOULD MAKE THE RECORDKEEPING, MONITORING,
15 OR REPORTING LESS REPRESENTATIVE, ENFORCEABLE, OR PUBLICLY ACCESSIBLE;

16 (5) REGULATING ANY AIR POLLUTANT COVERED BY THE NEW SOURCE
17 REVIEW REGULATIONS; AND

18 (6) PUBLIC PARTICIPATION, INCLUDING A PUBLIC COMMENT PERIOD,
19 PUBLIC NOTIFICATION, PUBLIC HEARING, OR OTHER OPPORTUNITIES OR FORMS OF
20 PUBLIC PARTICIPATION, PRIOR TO ISSUANCE OF A PERMIT TO CONSTRUCT.

21 (D) THE DEPARTMENT MAY ALTER A REGULATION SET FORTH IN SUBSECTION
22 (B) OF THIS SECTION THAT EXEMPTS OR REDUCES A REQUIREMENT LISTED IN
23 SUBSECTION (C) OF THIS SECTION IF:

24 (1) THE DEPARTMENT MAKES ITS DECISION TO AMEND OR REVISE THE
25 REGULATION BASED ON SUBSTANTIAL EVIDENCE IN THE RECORD THAT THE NEW
26 REGULATION:

27 (I) REPLACES AN EXISTING REGULATION THAT CAUSED A RISK TO
28 PUBLIC HEALTH OR SAFETY FROM EXPOSURE TO A TOXIC MATERIAL, A DANGEROUS
29 CONDITION, OR AN INFECTIOUS DISEASE WITH A REGULATION THAT PROVIDES
30 GREATER PROTECTION TO PUBLIC HEALTH OR SAFETY;

31 (II) REPLACES AN EXISTING REGULATION THAT HAS BEEN FOUND
32 TO BE UNWORKABLE DUE TO ENGINEERING OR OTHER TECHNICAL PROBLEMS WITH
33 A WORKABLE REGULATION;

34 (III) AMENDS AN EXISTING REGULATION THAT OTHERWISE WILL
35 CAUSE SUBSTANTIAL HARDSHIP TO A BUSINESS, INDUSTRY, OR CATEGORY OF
36 SOURCES, IF ALL OF THE FOLLOWING CRITERIA ARE MET:

1 1. THE AMENDMENT IS NARROWLY TAILORED TO RELIEVE
2 THE IDENTIFIED HARDSHIP;

3 2. THE DEPARTMENT PROVIDES FOR EQUIVALENT
4 REDUCTIONS IN EMISSIONS OF AIR CONTAMINANTS TO OFFSET ANY INCREASE IN
5 EMISSIONS OF AIR CONTAMINANTS;

6 3. ALL REDUCTIONS IN EMISSIONS OF AIR CONTAMINANTS
7 ARE REAL, SURPLUS, QUANTIFIABLE, VERIFIABLE, ENFORCEABLE, AND OCCUR NOT
8 MORE THAN 3 YEARS BEFORE, AND NOT MORE THAN 3 YEARS AFTER, THE
9 OCCURRENCE OF THE INCREASE IN EMISSIONS OF AIR CONTAMINANTS; AND

10 4. INFORMATION REGARDING THE REDUCTIONS IN
11 EMISSIONS OF AIR CONTAMINANTS IS AVAILABLE TO THE PUBLIC;

12 (IV) 1. IS A TEMPORARY REGULATION NECESSARY TO RESPOND
13 TO AN EMERGENCY CONSISTING OF A SUDDEN, UNEXPECTED OCCURRENCE AND
14 DEMANDING PROMPT ACTION TO PREVENT OR MITIGATE LOSS OF OR DAMAGE TO
15 LIFE, HEALTH, PROPERTY, OR ESSENTIAL SERVICES; AND

16 2. THE TEMPORARY REGULATION DOES NOT EXTEND
17 BEYOND THE REASONABLY ANTICIPATED DURATION OF THE EMERGENCY; OR

18 (V) WILL NOT IMPAIR OR IMPEDE CONTINUED MAINTENANCE OF
19 ALL NATIONAL AMBIENT AIR QUALITY STANDARDS OR PROGRESS TOWARD
20 ACHIEVING ATTAINMENT OF THOSE STANDARDS; AND

21 (2) THE AMENDED OR REVISED REGULATION WILL NOT EXEMPT OR
22 REDUCE THE OBLIGATION OF ANY STATIONARY SOURCE THAT CONSTITUTED A
23 MAJOR SOURCE UNDER THE REGULATIONS THAT EXISTED ON DECEMBER 30, 2002,
24 TO OBTAIN A PERMIT OR TO MEET BEST AVAILABLE CONTROL TECHNOLOGY
25 REQUIREMENTS.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 October 1, 2004.