
By: **Delegates Hubbard, Barkley, Barve, Benson, Bobo, Bronrott, Cane, Cardin, V. Clagett, Conroy, Cryor, Dumais, Franchot, Frush, Goldwater, Gordon, Gutierrez, Hammen, Heller, Holmes, Hurson, Kaiser, King, Kullen, Lee, Madaleno, Mandel, Moe, Montgomery, Murray, Nathan-Pulliam, Niemann, Oaks, Parker, Patterson, Pendergrass, Petzold, Proctor, Quinter, Ramirez, Rosenberg, Ross, Stern, Taylor, F. Turner, Vaughn, and Walkup**

Introduced and read first time: February 11, 2005

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Environment - Air Quality - Reducing Emissions of Four Pollutants from**
 3 **Power Plants**

4 FOR the purpose of establishing certain limits on the emissions of oxides of nitrogen,
 5 sulfur dioxide, mercury, and carbon dioxide from certain facilities; providing for
 6 the calculation of certain emission rates; authorizing certain facilities to
 7 determine the best method of compliance with certain facilities requirements of
 8 this Act; allowing certain offsets for certain emissions requirements under
 9 certain circumstances; requiring a certain facility to submit a certain report to
 10 the Department of the Environment, the Department of Natural Resources, and
 11 the Public Service Commission by a certain date and annually thereafter;
 12 requiring the Department of the Environment to adopt certain regulations to
 13 implement the provisions of this Act by a certain date; providing for civil and
 14 criminal penalties for a violation of this Act; establishing a Clean Air Fund in
 15 the Department of the Environment; providing that the Fund is a continuing,
 16 nonlapsing special fund not subject to certain provisions; requiring the Fund to
 17 be administered in a certain manner; providing that the Fund shall consist of
 18 certain moneys; providing for the uses of the Fund; prohibiting certain
 19 provisions of this Act from being construed in certain ways; defining certain
 20 terms; and generally relating to reducing emissions of four pollutants from
 21 power plants.

22 BY adding to
 23 Article - Environment
 24 Section 2-1001 through 2-1005, inclusive, to be under the new subtitle "Subtitle
 25 10. Emissions of Four Pollutants from Power Plants"
 26 Annotated Code of Maryland
 27 (1996 Replacement Volume and 2004 Supplement)

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

3 **Article - Environment**

4 SUBTITLE 10. EMISSIONS OF FOUR POLLUTANTS FROM POWER PLANTS.

5 2-1001.

6 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
7 INDICATED.

8 (B) (1) "AFFECTED FACILITY" MEANS A FACILITY THAT INCLUDES A FOSSIL
9 FUEL-FIRED BOILER OR INDIRECT HEAT EXCHANGER THAT WAS EXEMPTED FROM
10 THE PREVENTION OF SIGNIFICANT DETERIORATION REVIEW UNDER TITLE 1 OF THE
11 1977 FEDERAL CLEAN AIR ACT.

12 (2) "AFFECTED FACILITY" INCLUDES:

13 (I) H. A. WAGNER, UNITS 2 AND 3;

14 (II) R. P. SMITH, UNITS 3 AND 4;

15 (III) MORGANTOWN GENERATING STATION, UNITS 1 AND 2;

16 (IV) DICKERSON, UNITS 1, 2, AND 3;

17 (V) C. P. CRANE, UNITS 1 AND 2;

18 (VI) CHALK POINT GENERATING STATION, UNITS 1 AND 2; AND

19 (VII) BRANDON SHORES, UNITS 1 AND 2.

20 (C) "BASELINE EMISSIONS" MEANS THE AVERAGE ANNUAL EMISSIONS OF
21 CARBON DIOXIDE OR MERCURY FROM JANUARY 1, 2002 THROUGH DECEMBER 31,
22 2004.

23 (D) "BOILER" MEANS AN ENCLOSED FOSSIL OR OTHER FUEL-FIRED
24 COMBUSTION DEVICE USED TO PRODUCE HEAT AND TO TRANSFER HEAT TO
25 RECIRCULATING WATER, STEAM, OR OTHER MEDIUM.

26 2-1002.

27 (A) BEGINNING JANUARY 1, 2011, A PERSON WHO OWNS, LEASES, OPERATES,
28 OR CONTROLS AN AFFECTED FACILITY SHALL:

29 (1) ALLOW THE EMISSION OF NO MORE THAN 1.1 POUNDS OF OXIDES OF
30 NITROGEN PER MEGAWATT-HOUR, AS CALCULATED ON A ROLLING 30-DAY AVERAGE;

31 (2) ALLOW THE EMISSION OF NO MORE THAN 2.0 POUNDS OF SULFUR
32 DIOXIDE PER MEGAWATT-HOUR, AS CALCULATED ON A ROLLING 30-DAY AVERAGE;

1 (3) FOR EACH CALENDAR YEAR, REDUCE MERCURY EMISSIONS BY AT
2 LEAST 90% OF THE BASELINE EMISSIONS FOR MERCURY FROM THAT FACILITY; AND

3 (4) FOR EACH CALENDAR YEAR, ALLOW CARBON DIOXIDE EMISSIONS OF
4 NO MORE THAN 90% OF THE BASELINE EMISSIONS FOR CARBON DIOXIDE FROM THAT
5 FACILITY.

6 (B) BEGINNING JANUARY 1, 2021, A PERSON WHO OWNS, LEASES, OPERATES,
7 OR CONTROLS AN AFFECTED FACILITY SHALL ALLOW CARBON DIOXIDE EMISSIONS
8 OF NO MORE THAN 75% OF THE BASELINE EMISSIONS FOR THAT FACILITY.

9 (C) EMISSIONS OF CARBON DIOXIDE IN EXCESS OF THOSE CALCULATED
10 UNDER SUBSECTIONS (A)(4) AND (B) OF THIS SECTION MAY BE OFFSET BY:

11 (1) REDUCTIONS AT ANOTHER AFFECTED FACILITY IF:

12 (I) THOSE REDUCTIONS ARE NOT CLAIMED BY THE FACILITY AT
13 WHICH THE REDUCTIONS OCCUR FOR THE PURPOSE OF COMPLIANCE WITH THIS
14 SUBTITLE OR ANY OTHER LEGAL REQUIREMENT;

15 (II) CREDITS FROM THE REDUCTIONS HAVE NOT BEEN SOLD OR
16 MADE AVAILABLE FOR SALE TO ANY OTHER PARTY;

17 (III) THE AFFECTED FACILITY WITH EXCESS EMISSION DID NOT
18 EXCEED AN EMISSION RATE OF 1,800 POUNDS PER MEGAWATT-HOUR IN THE
19 PREVIOUS CALENDAR YEAR; AND

20 (IV) THE DEPARTMENT DETERMINES THAT THOSE REDUCTIONS :

21 1. WILL RESULT IN THE REDUCTION OF ACTUAL EMISSIONS
22 RELEASED INTO THE AIR;

23 2. WILL RESULT IN AN EMISSION REDUCTION THAT IS
24 BEYOND THE BASELINE EMISSIONS OF AN AFFECTED FACILITY AND IS NOT:

25 A. REQUIRED UNDER THE STATE IMPLEMENTATION PLAN;

26 B. RELIED ON IN ANY APPLICABLE ATTAINMENT
27 DEMONSTRATION; OR

28 C. ATTRIBUTABLE TO A GENERATING UNIT BEING TAKEN
29 OFF-LINE IN ACCORDANCE WITH A BANKRUPTCY JUDGMENT;

30 3. THROUGH A REPLICABLE METHOD THAT IS ACCEPTABLE
31 TO THE DEPARTMENT, CAN BE QUANTIFIED IN TERMS OF THE AMOUNT, RATE, AND
32 CHARACTERISTICS OF THE EMISSION REDUCTION;

33 4. WILL RESULT IN AN EMISSION REDUCTION THAT IS
34 ASSURED FOR THE LIFE OF THE CORRESPONDING EMISSION REDUCTION CREDIT
35 THROUGH AN ENFORCEABLE MECHANISM; AND

- 1 4. COMPLIANCE PERIODS;
- 2 5. CONTINUOUS EMISSIONS MONITORING;
- 3 6. EMISSION OFFSETS;
- 4 7. RECORD KEEPING; AND
- 5 8. REPORTING REQUIREMENTS;

6 (II) THE DEPARTMENT DETERMINES THE REDUCTIONS SATISFY
7 THE CONDITIONS OF PARAGRAPHS (1)(IV) AND (2)(II) OF THIS SUBSECTION; AND

8 (III) THE AFFECTED FACILITY WITH EXCESS EMISSIONS DID NOT
9 EXCEED AN EMISSION RATE OF 1,800 POUNDS PER MEGAWATT-HOUR IN THE
10 PREVIOUS CALENDAR YEAR.

11 (D) (1) THE EMISSION RATE UNDER SUBSECTION (C)(1)(III) AND (2)(II) OF
12 THIS SECTION SHALL BE CALCULATED BY CALENDAR YEAR BY DIVIDING THE TOTAL
13 NUMBER OF POUNDS OF CARBON DIOXIDE EMITTED BY THE AFFECTED FACILITY IN
14 THAT YEAR BY THE NET ELECTRIC OUTPUT FOR THE AFFECTED FACILITY FOR THE
15 SAME YEAR.

16 (2) THE PROVISIONS OF SUBSECTION (C)(3)(I) OF THIS SECTION SHALL
17 BE CONSTRUED TO ALLOW FOR STATE-SPECIFIC VARIATIONS THAT DO NOT IMPEDE
18 CAP-AND-TRADE ACTIVITIES WITHIN THE PARTICIPATING STATES.

19 (E) THE PROVISIONS OF THIS SECTION MAY NOT BE CONSTRUED TO AFFECT
20 EMISSIONS REQUIREMENTS, STANDARDS, OR LIMITATIONS IMPOSED ON
21 ELECTRICITY GENERATORS BY ANY OTHER PROVISION OF LAW THAT WOULD
22 RESULT IN EMISSIONS REDUCTIONS IN ADDITION TO THOSE REQUIRED UNDER THIS
23 SECTION.

24 (F) (1) THE PROVISIONS OF THIS SECTION MAY NOT BE CONSTRUED TO
25 LIMIT THE AUTHORITY OF THE DEPARTMENT TO IMPOSE MORE STRINGENT
26 REQUIREMENTS ON THE EMISSION OF OXIDES OF NITROGEN, SULFUR DIOXIDE,
27 MERCURY, AND CARBON DIOXIDE FROM AN AFFECTED FACILITY.

28 (2) A PERSON WHO OWNS, LEASES, OPERATES, OR CONTROLS AN
29 AFFECTED FACILITY THAT IS SUBJECT TO THE REQUIREMENTS OF THIS SECTION
30 MAY DETERMINE HOW BEST TO ACHIEVE THE COLLECTIVE EMISSIONS
31 REQUIREMENTS UNDER SUBSECTIONS (A) AND (B) OF THIS SECTION.

32 2-1003.

33 (A) BEGINNING DECEMBER 1, 2006, AND EACH YEAR THEREAFTER, A PERSON
34 WHO OWNS, LEASES, OPERATES, OR CONTROLS AN AFFECTED FACILITY SHALL
35 SUBMIT TO THE DEPARTMENT, THE DEPARTMENT OF NATURAL RESOURCES, AND
36 THE PUBLIC SERVICE COMMISSION A REPORT THAT INCLUDES:

1 (1) EMISSIONS PERFORMANCE RESULTS RELATED TO COMPLIANCE
2 WITH THE EMISSIONS REQUIREMENTS UNDER § 2-1002 OF THIS SUBTITLE;

3 (2) THE NUMBER OF POUNDS OF OXIDES OF NITROGEN, SULFUR
4 DIOXIDE, MERCURY, AND CARBON DIOXIDE EMITTED DURING THE PREVIOUS
5 CALENDAR YEAR FROM THE AFFECTED FACILITY;

6 (3) A CURRENT COMPLIANCE PLAN; AND

7 (4) ANY OTHER INFORMATION REQUESTED BY THE DEPARTMENT.

8 (B) THE DEPARTMENT SHALL REVIEW THE REPORT SUBMITTED UNDER THIS
9 SECTION TO DETERMINE WHETHER THE ACTUAL AND PROPOSED MODIFICATIONS
10 AND PERMIT AND CONSTRUCTION SCHEDULES ARE ADEQUATE TO ACHIEVE THE
11 EMISSIONS REQUIREMENTS UNDER THIS SUBTITLE AND SHALL MAKE THESE
12 DETERMINATIONS PUBLICLY AVAILABLE ON AN ANNUAL BASIS.

13 2-1004.

14 BY DECEMBER 31, 2005, THE DEPARTMENT SHALL ADOPT REGULATIONS TO
15 IMPLEMENT THE PROVISIONS OF THIS SUBTITLE, INCLUDING:

16 (1) TESTING AND DATA COLLECTION;

17 (2) ALLOWANCE TRACKING;

18 (3) COMPLIANCE PERIODS;

19 (4) CONTINUOUS EMISSIONS MONITORING;

20 (5) EMISSION OFFSETS;

21 (6) RECORD KEEPING AND REPORTING REQUIREMENTS; AND

22 (7) IN CONSULTATION WITH THE DEPARTMENT OF NATURAL
23 RESOURCES, VEGETATIVE SEQUESTRATION, AS AUTHORIZED UNDER § 2-1002(C)(2) OF
24 THIS SUBTITLE.

25 2-1005.

26 (A) THE PROVISIONS OF THIS SECTION ARE IN ADDITION TO ANY OTHER
27 APPLICABLE PROVISION OF LAW.

28 (B) (1) A PERSON WHO VIOLATES A PROVISION OF THIS SUBTITLE OR ANY
29 REGULATION ADOPTED UNDER THIS SUBTITLE IS GUILTY OF A MISDEMEANOR AND
30 ON CONVICTION IS SUBJECT TO:

31 (I) FOR A FIRST OFFENSE, A FINE NOT EXCEEDING \$25,000 OR
32 IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH; OR

1 (II) FOR A VIOLATION COMMITTED AFTER A FIRST CONVICTION
2 FOR AN OFFENSE UNDER THIS SUBTITLE, A FINE NOT EXCEEDING \$50,000 OR
3 IMPRISONMENT NOT EXCEEDING 2 YEARS OR BOTH.

4 (2) EACH DAY ON WHICH A VIOLATION OCCURS IS A SEPARATE OFFENSE
5 UNDER THIS SUBSECTION.

6 (3) A CRIMINAL PROSECUTION FOR A VIOLATION UNDER THIS SUBTITLE
7 SHALL BE INSTITUTED WITHIN 3 YEARS OF THE COMMISSION OF THE VIOLATION.

8 (C) (1) THE DEPARTMENT MAY BRING A CIVIL ACTION AGAINST A PERSON
9 FOR A VIOLATION OF THIS SUBTITLE OR ANY REGULATION ADOPTED UNDER THIS
10 SUBTITLE.

11 (2) (I) A CIVIL ACTION BROUGHT UNDER THIS SUBSECTION MAY SEEK
12 THE IMPOSITION OF A CIVIL PENALTY UP TO \$25,000 FOR EACH VIOLATION, AN
13 INJUNCTION TO PROHIBIT THE PERSON FROM CONTINUING THE VIOLATION, OR
14 BOTH.

15 (II) EACH DAY ON WHICH A VIOLATION OCCURS IS A SEPARATE
16 OFFENSE UNDER THIS SUBSECTION.

17 (3) ANY PENALTY IMPOSED UNDER THIS SUBSECTION IS PAYABLE TO
18 THE STATE AND COLLECTIBLE IN ANY MANNER PROVIDED AT LAW FOR THE
19 COLLECTION OF PENALTIES.

20 (D) (1) THERE IS A CLEAN AIR FUND ADMINISTERED BY THE DEPARTMENT.

21 (2) (I) THE FUND IS A CONTINUING, NONLAPSING SPECIAL FUND
22 THAT IS NOT SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT
23 ARTICLE.

24 (II) THE TREASURER SHALL HOLD THE FUND SEPARATELY AND
25 THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.

26 (3) THE FUND CONSISTS OF:

27 (I) CRIMINAL AND CIVIL PENALTIES IMPOSED UNDER THIS
28 SUBTITLE;

29 (II) MONEY APPROPRIATED IN THE STATE BUDGET TO THE FUND;
30 AND

31 (III) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED FOR
32 THE BENEFIT OF THE FUND.

33 (4) THE FUND MAY BE USED ONLY TO OFFSET THE COSTS OF
34 UPGRADING TECHNOLOGY THAT WILL REDUCE AIR POLLUTION IN INDUSTRIES
35 OTHER THAN THE ELECTRICITY GENERATION INDUSTRY.

1 (5) (I) THE TREASURER SHALL INVEST THE MONEY OF THE FUND IN
2 THE SAME MANNER AS OTHER STATE MONEY MAY BE INVESTED.

3 (II) ANY INVESTMENT EARNINGS OF THE FUND SHALL BE
4 CREDITED TO THE FUND.

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 June 1, 2005.