
By: **Delegates Stern, Bobo, and V. Clagett**
Introduced and read first time: February 10, 2006
Assigned to: Environmental Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 20, 2006

CHAPTER _____

1 AN ACT concerning

2 **Environment - Judicial Review of Permits - Standing**

3 FOR the purpose of repealing certain contested case hearing provisions related to
4 permitting decisions by the Department of the Environment; authorizing
5 judicial review of certain permitting decisions by the Department for certain
6 persons who meet certain federal standing requirements; providing for the scope
7 of judicial review; requiring a certain petition for judicial review to be filed with
8 a certain circuit court; altering certain temporary stay provisions; and generally
9 relating to standing and the judicial review of permits issued by the Department
10 of the Environment.

11 BY repealing and reenacting, with amendments,
12 Article - Environment
13 Section 5-204, 14-105(b), 15-810(e), 15-813(g), and 16-307(d)
14 Annotated Code of Maryland
15 (1996 Replacement Volume and 2005 Supplement)

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

18 **Article - Environment**

19 5-204.

20 (a) (1) It is the intent of the General Assembly to establish consolidated
21 procedures and notice and hearing requirements for Title 5, Subtitles 5 and 9 and
22 Titles 14, 15, and 16 of this article in order to ensure efficient review and consistent
23 decision making.

1 (2) Notwithstanding any provision of the State Government Article,
2 public notice on pending applications provided in accordance with the provisions of
3 this section shall be the only notice required by law.

4 (b) (1) Applicants shall ascertain the names and addresses of all current
5 owners of property contiguous to the parcel upon which the proposed activity will
6 occur and personally or by certified mail serve notice upon each owner.

7 (2) Applicants shall serve personally or by certified mail appropriate
8 local officials.

9 (3) Applicants shall provide the Department with certification that
10 notice has been served on all contiguous property owners and appropriate local
11 officials.

12 (4) Upon substantial completion of an application the Department shall
13 draft a public notice that includes:

14 (i) The name and address of the applicant;

15 (ii) A description of the location and nature of the activity for which
16 application has been made;

17 (iii) The name, address, and telephone number of the office within
18 the Department from which information about the application may be obtained;

19 (iv) A statement that any further notices about actions on the
20 application will be provided only by mail to those persons on a mailing list of
21 interested persons;

22 (v) A description of how persons may submit information or
23 comments about the application, request a public informational hearing, or request to
24 be included on the mailing list of interested persons; and

25 (vi) A deadline for the close of the public comment period by which
26 information, comments, or requests must be received by the Department.

27 (5) The Department shall prepare a public notice to be published for at
28 least 1 business day in a newspaper of general circulation in the area where the
29 proposed activity would occur. At its discretion, the Department shall:

30 (i) Publish the public notice; or

31 (ii) Direct the applicant to publish the public notice.

32 (6) The applicant shall bear the cost of the newspaper notice.

33 (7) The Department shall mail public notices to a general subscription
34 mailing list.

1 (8) Comments on an application or requests for a public informational
2 hearing must be forwarded in writing to the Department prior to the close of the
3 public comment period specified in the public notice.

4 (9) The Department shall compile an interested persons list containing
5 the names of all contiguous property owners, appropriate local officials, and
6 individuals that comment on, request hearings, or make inquiries about an
7 application during any phase of the Department's review.

8 (10) No further notice will be provided except to persons on the interested
9 persons list.

10 (c) The Department shall hold a public informational hearing if it receives a
11 timely written request in accordance with the following provisions:

12 (1) The request shall be received prior to the close of the public comment
13 period.

14 (2) A public informational hearing shall be held within 45 calendar days
15 of the close of the public comment period.

16 (3) The Department shall specify the date, time, and location of the
17 public hearing.

18 (4) The Department shall mail notice of the date, time, and location of
19 any public informational hearing on an application to those persons on the interested
20 persons list no later than 14 calendar days prior to the hearing.

21 (5) The Department may extend the official record of a public
22 informational hearing.

23 (d) Following the application review and comment period and within 30
24 calendar days after the close of the public informational hearing record, the
25 Department shall issue, modify, or deny the permit or license unless extenuating
26 circumstances justify an extension of time.

27 (e) The Department shall mail notice of a decision to issue, modify, or deny a
28 permit or license to the applicant and to those persons on the interested persons list.

29 [(f) When opportunity for a contested case hearing on the Department's
30 decision to issue, modify, or deny a permit or license is provided by law, the
31 Department shall provide all persons on the interested persons list and the applicant
32 an opportunity to make a written request for a contested case hearing within 14
33 calendar days of the mailing date of the notice of decision.

34 (g) Upon written request the Department shall grant a contested case hearing
35 if it determines that:

1 (1) The requester has a specific right, duty, privilege, or interest which is
2 or may be adversely affected by the permit determination or license decision and
3 which is different from that held by the general public;

4 (2) The requester raises adjudicable issues which are within the scope of
5 the permit authority; and

6 (3) The request is timely.]

7 (F) (1) A FINAL DECISION BY THE DEPARTMENT ON THE ISSUANCE,
8 RENEWAL, OR REVISION OF ANY PERMIT ISSUED UNDER TITLE 5, SUBTITLES 5 AND 9
9 ~~AND TITLES 14, 15, AND 16~~ OR § 14-105, § 15-810, § 15-813, OR § 16-307 OF THIS ARTICLE
10 IS SUBJECT TO JUDICIAL REVIEW ~~BY~~ AT THE REQUEST OF ANY PERSON WHO:

11 ~~(+)~~ (I) MEETS THE THRESHOLD STANDING REQUIREMENTS UNDER
12 FEDERAL CONSTITUTIONAL LAW; AND

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

17 (2) IF A PERSON IS ENTITLED TO JUDICIAL REVIEW IN ACCORDANCE
18 WITH PARAGRAPH (1) OF THIS SUBSECTION, JUDICIAL REVIEW SHALL BE AVAILABLE
19 IMMEDIATELY AND A CONTESTED CASE HEARING MAY NOT OCCUR.

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

23 (1) THAT THE OBJECTIONS WERE NOT REASONABLY ASCERTAINABLE
24 DURING THE COMMENT PERIOD; OR

25 (2) THAT GROUNDS FOR THE OBJECTIONS AROSE AFTER THE COMMENT
26 PERIOD.

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

31 [(h)] (I) Upon motion by a party [to a contested case hearing] PETITIONING
32 FOR JUDICIAL REVIEW, the Department may grant a temporary stay of the issuance
33 of the permit pending a final decision [in the contested case], provided that:

34 (1) The parties to the proceeding have been notified and given an
35 opportunity to be heard on a request for the temporary stay;

1 (2) The party requesting the temporary stay shows that there is a
2 substantial likelihood of prevailing on the merits of issues to be presented [during the
3 contested case proceeding] IN THEIR PETITION FOR JUDICIAL REVIEW;

4 (3) The temporary stay will not adversely affect the public health or
5 safety or cause significant, imminent environmental harm to land, air, or water
6 resources; and

7 (4) The conditions and criteria for granting a temporary stay as provided
8 in regulations for contested case hearings adopted by the Department have been met.
9 14-105.

10 (b) The Department shall provide public notice, public informational hearings,
11 and [contested case hearings] JUDICIAL REVIEW in accordance with the provisions of
12 § 5-204 of this article.

13 15-810.

14 (e) Public notice, informational hearings, and [contested case hearings]
15 JUDICIAL REVIEW shall be conducted in accordance with the provisions of § 5-204 of
16 this article.

17 15-813.

18 (g) The Department shall provide opportunity for [a contested case hearing]
19 JUDICIAL REVIEW in accordance with the provisions of § 5-204 of this article.

20 16-307.

21 (d) The Secretary shall provide opportunity for [a contested case hearing]
22 JUDICIAL REVIEW in accordance with the provisions of § 5-204(f) through (h) of this
23 article.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2006.