

**ENROLLED BILL**

-- Education, Health, and Environmental Affairs/Economic Matters --

Introduced by **Senators Pinsky, Britt, Brochin, Conway, Della, Dyson, Exum, Forehand, Frosh, Garagiola, Giannetti, Gladden, Green, Grosfeld, Hughes, Jones, Kelley, Lawlah, McFadden, Ruben, Stone, and Teitelbaum**

Read and Examined by Proofreaders:

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Proofreader.

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Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

\_\_\_\_\_  
President.

CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Healthy Air Act**

3 FOR the purpose of ~~establishing certain limits on the emissions prohibiting affected~~  
4 ~~facilities collectively from emitting more than certain amounts per year of~~  
5 ~~oxides of nitrogen, sulfur dioxide, and mercury, and carbon dioxide from certain~~  
6 ~~facilities by on or after certain dates; authorizing the Department of the~~  
7 ~~Environment to set a certain interim stage of sulfur dioxide emissions~~  
8 ~~reductions; requiring the Department of the Environment to set certain~~  
9 ~~emissions budgets; authorizing an affected facility to exceed certain budgets~~  
10 ~~under certain circumstances; requiring the Governor to include the State in the~~  
11 ~~Regional Greenhouse Gas Initiative or, the alternative, requiring the~~  
12 ~~Department to adopt certain regulations to reduce carbon dioxide emissions~~  
13 ~~from affected facilities; providing for the withdrawal of the State from the~~  
14 ~~Regional Greenhouse Gas Initiative under certain circumstances after a certain~~

1 date; encouraging the State to join a successor organization if the Regional  
 2 Greenhouse Gas Initiative expires; requiring the Governor to report to the  
 3 General Assembly under certain circumstances; providing for the application of  
 4 this Act; authorizing affected facilities to determine the best method of  
 5 compliance with requirements of this Act; authorizing the Department to reduce  
 6 or waive certain penalties under certain circumstances; providing for judicial  
 7 review of certain decisions under certain circumstances; requiring the  
 8 Department to treat certain allowances allocated by the U.S. Environmental  
 9 Protection Agency to the State in a certain manner; requiring certain facilities to  
 10 submit, to the Department, the Department of Natural Resources, and the  
 11 Public Service Commission, a certain compliance report by a certain date;  
 12 requiring the Department to review certain information received in accordance  
 13 with this Act; requiring the Department to adopt certain regulations; providing  
 14 for certain administrative and civil penalties for certain violations; providing for  
 15 criminal and civil penalties for a violation establishing certain allowance  
 16 penalties for certain violations of this Act; requiring the Department to allow a  
 17 certain affected facility to operate without complying with the requirements of  
 18 this Act under certain circumstances; prohibiting a certain affected facility from  
 19 operating above certain emissions levels; requiring the Department to review the  
 20 operations of an affected facility and establish a certain requirement by  
 21 regulation under certain circumstances; requiring the Public Service  
 22 Commission to expedite a certain review and approval or certificate of public  
 23 convenience; establishing a Maryland Carbon Reduction Fund in the Maryland  
 24 Energy Administration; providing for the operation and maintenance of the  
 25 Fund; providing that the Fund consists of certain fines and penalties, certain  
 26 proceeds, and certain other money; defining certain terms; requiring the  
 27 Department to enter into a certain contract to conduct a certain study; requiring  
 28 the Department to make a certain report on or before a certain date; and  
 29 generally relating to the emissions of four pollutants from power plants.

30 BY adding to  
 31 Article - Environment  
 32 Section 2-1001 through 2-1005, inclusive, to be under the new subtitle "Subtitle  
 33 10. Healthy Air Act"  
 34 Annotated Code of Maryland  
 35 (1996 Replacement Volume and 2005 Supplement)

36 BY repealing and reenacting, with amendments,  
 37 Article - Public Utility Companies  
 38 Section 7-206  
 39 Annotated Code of Maryland  
 40 (1998 Replacement Volume and 2005 Supplement)

41 ~~BY adding to~~  
 42 ~~Article - State Government~~  
 43 ~~Section 9-2009~~

1 ~~Annotated Code of Maryland~~  
2 ~~(2004 Replacement Volume and 2005 Supplement)~~

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

5 **Article - Environment**

6 SUBTITLE 10. HEALTHY AIR ACT.

7 2-1001.

8 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
9 INDICATED.

10 (B) (1) "AFFECTED FACILITY" MEANS AN ELECTRICITY GENERATING UNIT  
11 IN THE STATE THAT INCLUDES A ~~FOSSIL FUEL~~ COAL FIRED BOILER OR INDIRECT  
12 HEAT EXCHANGER THAT WAS EXEMPTED FROM THE PREVENTION OF SIGNIFICANT  
13 DETERIORATION REVIEW UNDER TITLE 1 OF THE 1977 FEDERAL CLEAN AIR ACT.

14 (2) "AFFECTED FACILITY" INCLUDES:

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

16 (II) SUBJECT TO § 2-1003(C) OF THIS SUBTITLE, R.P. SMITH, UNITS 3  
17 AND 4;

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

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

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

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

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

23 (3) "AFFECTED FACILITY" DOES NOT INCLUDE ANY ELECTRICITY  
24 GENERATING UNIT:

25 (I) THAT OPERATES IN COMBINATION WITH EQUIPMENT USED TO  
26 RECOVER USEFUL THERMAL ENERGY FOR INDUSTRIAL, COMMERCIAL, HEATING, OR  
27 COOLING PURPOSES THROUGH SEQUENTIAL USE OF ENERGY; OR

28 (II) THAT SUPPLIES IN ANY CALENDAR YEAR LESS THAN  
29 ONE-HALF OF THE ELECTRICITY GENERATED BY SUCH UNIT TO ANY UTILITY POWER  
30 DISTRIBUTION SYSTEM FOR SALE.

31 (C) "ALLOWANCE" MEANS:

1           (1)     ~~ONE TON OF SULFUR DIOXIDE THAT MAY BE BOUGHT, SOLD,~~  
2 ~~TRADED, OR BANKED FOR USE UNDER THE ACID RAIN PROGRAM IN THE U.S.~~  
3 ~~ENVIRONMENTAL PROTECTION AGENCY; OR~~

4           (2)     ~~ONE TON OF OXIDES OF NITROGEN THAT MAY BE BOUGHT, SOLD,~~  
5 ~~TRADED, OR BANKED FOR USE UNDER THE NITROGEN OXIDES BUDGET TRADING~~  
6 ~~PROGRAM IN THE U.S. ENVIRONMENTAL PROTECTION AGENCY.~~

7     ~~(C)~~     (D)     ~~"INLET MERCURY" MEANS THE AVERAGE CONCENTRATION OF~~  
8 ~~MERCURY IN FLUE GAS AT THE INLET OF THE EMISSION CONTROL DEVICE~~  
9 ~~IMMEDIATELY DOWNSTREAM OF THE BOILER OF AN ELECTRICITY GENERATING~~  
10 ~~UNIT, AS DETERMINED BY METHODS PRESCRIBED BY THE DEPARTMENT.~~

11     ~~(D)~~     "LOAD-SERVING ENTITY" MEANS AN ELECTRIC COMPANY, MUNICIPAL  
12 CORPORATION, OR COOPERATIVE SERVING ELECTRICITY CUSTOMERS IN MARYLAND.

13     ~~(E)~~     "PJM REGION" HAS THE MEANING STATED UNDER § 7-701 OF THE PUBLIC  
14 UTILITY COMPANIES ARTICLE.

15 2-1002.

16     (A)     ~~ON OR AFTER JANUARY 1, 2010~~ 2009, THERE IS AN ANNUAL CEILING ON  
17 ~~THE TOTAL AMOUNT OF OXIDES OF NITROGEN AND SULFUR DIOXIDE EMISSIONS~~  
18 ~~FROM AFFECTED FACILITIES AS FOLLOWS:~~

19           (1)     ~~21,303 TONS OF OXIDES OF NITROGEN; AND~~

20           (2)     ~~39,925 TONS OF SULFUR DIOXIDE.~~ AFFECTED FACILITIES  
21 COLLECTIVELY MAY NOT EMIT MORE THAN 21,475 20,216 TONS OF OXIDES OF  
22 NITROGEN PER YEAR.

23     (B)     (1)     ~~ON OR AFTER JANUARY 1, 2010, AFFECTED FACILITIES~~  
24 COLLECTIVELY MAY NOT EMIT MORE THAN 48,618 TONS OF SULFUR DIOXIDE PER  
25 YEAR.

26           (2)     ~~THE DEPARTMENT MAY SET AN INTERIM STAGE REDUCTION FOR~~  
27 SULFUR DIOXIDE.

28     ~~(B)~~     (C)     ~~ON OR AFTER JANUARY 1, 2015~~ 2012, THE ANNUAL CEILING ON THE  
29 ~~TOTAL AMOUNT OF OXIDES OF NITROGEN AND SULFUR DIOXIDE EMISSIONS FROM~~  
30 ~~AFFECTED FACILITIES SHALL BE REDUCED TO:~~

31           (1)     ~~13,339 TONS OF OXIDES OF NITROGEN; AND~~

32           (2)     ~~24,645 TONS OF SULFUR DIOXIDE.~~ AFFECTED FACILITIES  
33 COLLECTIVELY MAY NOT EMIT MORE THAN 47,926 16,667 TONS OF OXIDES OF  
34 NITROGEN PER YEAR.

35     (D)     ~~ON OR AFTER JANUARY 1, 2015~~ 2013, AFFECTED FACILITIES COLLECTIVELY  
36 MAY NOT EMIT MORE THAN 32,322 37,235 TONS OF SULFUR DIOXIDE PER YEAR.

1 ~~(C)~~ (E) (1) THE DEPARTMENT SHALL SET EMISSIONS BUDGETS FOR EACH  
 2 AFFECTED FACILITY TO IMPLEMENT THE EMISSIONS LIMITATIONS IN SUBSECTIONS  
 3 ~~(A) AND (B)~~ (A), (B), (C), AND (D) OF THIS SECTION.

4 (2) (I) THIS PARAGRAPH APPLIES TO AN AFFECTED FACILITY THAT IS  
 5 OWNED, LEASED, OPERATED, OR CONTROLLED BY A PERSON THAT OWNS, LEASES,  
 6 OPERATES, OR CONTROLS MORE THAN ONE AFFECTED FACILITY.

7 (II) AN AFFECTED FACILITY MAY EMIT MORE THAN THE EMISSIONS  
 8 BUDGET SET FOR THE FACILITY UNDER PARAGRAPH (1) OF THIS SUBSECTION AS  
 9 LONG AS THE PERSON OWNING, LEASING, OPERATING, OR CONTROLLING THE  
 10 AFFECTED FACILITY DOES NOT EXCEED THE CUMULATIVE EMISSIONS BUDGET FOR  
 11 ALL OF THE AFFECTED FACILITIES THAT THE PERSON OWNS, LEASES, OPERATES, OR  
 12 CONTROLS.

13 (3) IF AN AFFECTED FACILITY PERMANENTLY CEASES OPERATION, THE  
 14 DEPARTMENT:

15 (I) SHALL SUBTRACT THE EMISSIONS BUDGET FOR THAT  
 16 AFFECTED FACILITY FROM THE EMISSIONS LIMITATIONS ESTABLISHED IN  
 17 SUBSECTIONS (A), (B), (C), AND (D) OF THIS SECTION; AND

18 (II) MAY NOT INCREASE EXISTING EMISSIONS BUDGETS FOR ALL  
 19 OTHER AFFECTED FACILITIES.

20 ~~(D)~~ (F) (1) ON OR AFTER JANUARY 1, 2010, A PERSON THAT OWNS, LEASES,  
 21 OPERATES, OR CONTROLS AN AFFECTED FACILITY SHALL:

22 ~~(4)~~ (4) ACHIEVE A MINIMUM 90% 80% CAPTURE OF INLET MERCURY FOR  
 23 EACH AFFECTED FACILITY, CALCULATED AS A ROLLING 12-MONTH AVERAGE; AND.

24 (2) ON OR AFTER JANUARY 1, 2012 2013, A PERSON THAT OWNS, LEASES,  
 25 OPERATES, OR CONTROLS AN AFFECTED FACILITY SHALL ACHIEVE A MINIMUM 90%  
 26 CAPTURE OF INLET MERCURY FOR EACH AFFECTED FACILITY, CALCULATED AS A  
 27 ROLLING 12-MONTH AVERAGE.

28 ~~(2)~~ (3) A PERSON THAT OWNS, LEASES, OPERATES, OR CONTROLS AN  
 29 AFFECTED FACILITY SHALL DEMONSTRATE COMPLIANCE WITH PARAGRAPH (4) OF  
 30 THIS SUBSECTION THROUGH THE DIRECT MONITORING OF MERCURY EMISSIONS ON  
 31 A CONTINUOUS BASIS, ACCORDING TO THE REQUIREMENTS OF 40 C.F.R. PART 60,  
 32 60.49A(P), 60.4170-60.4176, AND 40 C.F.R. PART 75, SUBPART I.

33 (4) THE DEPARTMENT SHALL ADOPT REGULATIONS THAT ESTABLISH A  
 34 PROCEDURE TO BE USED TO DETERMINE A BASELINE AMOUNT OF MERCURY AT  
 35 EACH AFFECTED FACILITY FOR PURPOSES OF CALCULATING THE CAPTURE RATE  
 36 REQUIRED UNDER THIS SUBSECTION.

37 ~~(E)~~ (G) (1) NOT LATER THAN JUNE 30, 2007;.

1           (1)     THE GOVERNOR SHALL INCLUDE THE STATE AS A FULL  
2 PARTICIPANT IN THE REGIONAL GREENHOUSE GAS INITIATIVE AMONG  
3 MID-ATLANTIC AND NORTHEAST STATES; ~~OR,~~

4           (2)     ~~THE DEPARTMENT SHALL ADOPT REGULATIONS TO REQUIRE A 10%~~  
5 ~~REDUCTION OF CARBON DIOXIDE EMISSIONS FROM AFFECTED FACILITIES BY 2018,~~  
6 ~~THROUGH AN IN-STATE SYSTEM FOR TRADING AND TRACKING CARBON DIOXIDE~~  
7 ~~EMISSIONS IN ACCORDANCE WITH SUBSECTION (F) OF THIS SECTION.~~

8           (F)     ~~AS PART OF THE SYSTEM REQUIRED UNDER SUBSECTION (E)(2) OF THIS~~  
9 ~~SECTION, THE DEPARTMENT SHALL:~~

10           (1)     ~~CREATE A BASELINE EMISSION LEVEL BY ESTABLISHING~~  
11 ~~ALLOWANCES FOR THE EMISSION OF CARBON DIOXIDE EQUIVALENT TO THE 2004~~  
12 ~~CARBON DIOXIDE EMISSIONS OF THE AFFECTED FACILITIES AS FOLLOWS:~~

13           (I)     ~~THE DEPARTMENT SHALL GRANT UP TO 75% OF THE~~  
14 ~~ALLOWANCES TO THE OWNERS OF THE AFFECTED FACILITIES IN PROPORTION TO~~  
15 ~~THEIR 2004 EMISSIONS;~~

16           (II)    ~~THE DEPARTMENT SHALL AUCTION AT LEAST 25% OF THE~~  
17 ~~ALLOWANCES, WITH THE PROCEEDS DEPOSITED IN THE MARYLAND CARBON~~  
18 ~~REDUCTION FUND ESTABLISHED UNDER § 9-2009 OF THE STATE GOVERNMENT~~  
19 ~~ARTICLE;~~

20           (III)   ~~EFFECTIVE JANUARY 1, 2009, A PERSON THAT OWNS, LEASES,~~  
21 ~~OPERATES, OR CONTROLS AN AFFECTED FACILITY MAY NOT EMIT MORE CARBON~~  
22 ~~DIOXIDE THAN THE TOTAL ALLOWANCES HELD BY THE PERSON;~~

23           (IV)    ~~EFFECTIVE JANUARY 1, 2015, THE NUMBER OF TONS OF~~  
24 ~~CARBON DIOXIDE REPRESENTED BY EACH ALLOWANCE SHALL BE REDUCED BY 2.5%~~  
25 ~~PER YEAR, SUCH THAT EACH ALLOWANCE IN 2018 WILL REPRESENT 10% LESS THAN~~  
26 ~~EACH ALLOWANCE IN 2014;~~

27           (V)     ~~FOR THE PURPOSES OF THIS SUBSECTION, CARBON DIOXIDE~~  
28 ~~EMISSIONS SHALL BE CALCULATED USING FUEL USE DATA AS REPORTED ON FORM~~  
29 ~~906, SUBMITTED TO THE U.S. ENERGY INFORMATION ADMINISTRATION; AND~~

30           (VI)    ~~UP TO 3.3% OF THE EMISSIONS OF CARBON DIOXIDE OF AN~~  
31 ~~AFFECTED FACILITY MAY BE OFFSET BY CREDITS OBTAINED FROM ANY SPONSOR OF~~  
32 ~~AN EMISSIONS REDUCTION OR CARBON SEQUESTRATION PROJECT THAT IS FOUND~~  
33 ~~BY THE SECRETARY TO MEET ALL APPLICABLE CRITERIA FOR SUCH PROJECTS IN~~  
34 ~~ACCORDANCE WITH THE REGIONAL GREENHOUSE GAS INITIATIVE; AND~~

35           (2)     ~~ESTABLISH A SYSTEM FOR OFFSETTING THE CARBON DIOXIDE~~  
36 ~~EMISSIONS OF STATEWIDE ELECTRICITY IMPORTS ABOVE THE AMOUNT OF~~  
37 ~~ELECTRICITY IMPORTED IN 2004 AS FOLLOWS:~~

38           (1)     ~~A LOAD-SERVING ENTITY IN THE STATE THAT CONTRACTS TO~~  
39 ~~PURCHASE ELECTRIC POWER GENERATED IN A STATE OTHER THAN MARYLAND OR~~

1 STATES PARTICIPATING IN THE REGIONAL GREENHOUSE GAS INITIATIVE IN ORDER  
2 TO REPLACE ELECTRIC POWER FORMERLY PURCHASED FROM AN AFFECTED  
3 FACILITY, SHALL OFFSET THE CARBON DIOXIDE EMISSIONS OF THAT POWER; AND

4 (H) THE AMOUNT OF CARBON DIOXIDE EMISSIONS ATTRIBUTED TO  
5 POWER GENERATED IN A STATE OTHER THAN MARYLAND OR A STATE  
6 PARTICIPATING IN THE REGIONAL GREENHOUSE GAS INITIATIVE SHALL BE  
7 CALCULATED ACCORDING TO THE AVERAGE CARBON DIOXIDE EMISSIONS OF THE  
8 ELECTRICITY GENERATED BY THE PERSON SELLING THE POWER IN THE REGION IN  
9 WHICH SUCH POWER IS GENERATED.

10 (2) IF THE DEPARTMENT, IN CONSULTATION WITH THE PUBLIC SERVICE  
11 COMMISSION, DETERMINES THAT PARTICIPATION IN THE REGIONAL GREENHOUSE  
12 GAS INITIATIVE WILL COMPROMISE THE RELIABILITY OF THE ELECTRIC SYSTEM IN  
13 THE STATE, THE STATE MAY WITHDRAW FROM THE INITIATIVE, AS PROVIDED IN THE  
14 DECEMBER 20, 2005 MEMORANDUM OF UNDERSTANDING OF THE INITIATIVE, AT ANY  
15 TIME AFTER JANUARY 1, 2009.

16 (3) IF THE REGIONAL GREENHOUSE GAS INITIATIVE EXPIRES AND  
17 THERE IS A SUCCESSOR ORGANIZATION WITH THE SAME PURPOSES AND GOALS, THE  
18 GOVERNOR IS ENCOURAGED TO JOIN THE STATE IN THE SUCCESSOR ORGANIZATION.

19 (4) IF THE STATE'S PARTICIPATION IN THE REGIONAL GREENHOUSE  
20 GAS INITIATIVE CEASES FOR ANY REASON, THE GOVERNOR SHALL REPORT TO THE  
21 GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT  
22 ARTICLE, REGARDING:

23 (I) WHY PARTICIPATION CEASED; AND

24 (II) A PLAN TO REDUCE CARBON DIOXIDE EMISSIONS FROM POWER  
25 PLANTS IN THE STATE THAT CONSIDERS THE USE OF MARYLAND GROWN, NATIVE,  
26 WARM SEASON GRASSES AS A POSSIBLE METHOD OF REDUCING CARBON EMISSION.

27 (G) (H) THE PROVISIONS OF THIS SECTION MAY NOT BE CONSTRUED TO  
28 AFFECT EXISTING OR FUTURE EMISSIONS REQUIREMENTS, STANDARDS, OR  
29 LIMITATIONS IMPOSED ON ELECTRICITY GENERATORS BY ANY OTHER EXISTING OR  
30 FUTURE PROVISION OF LAW THAT WOULD RESULT IN EMISSIONS REDUCTIONS IN  
31 ADDITION TO THOSE REQUIRED UNDER THIS SECTION.

32 (H) (I) (1) A PERSON THAT OWNS, LEASES, OPERATES, OR CONTROLS AN  
33 AFFECTED FACILITY THAT IS SUBJECT TO THE REQUIREMENTS OF THIS SECTION  
34 MAY DETERMINE HOW BEST TO ACHIEVE THE COLLECTIVE EMISSIONS  
35 REQUIREMENTS UNDER SUBSECTIONS (A), (B), ~~AND (E)~~ (C), AND (D) OF THIS SECTION.

36 (2) (I) IF A PERSON THAT OWNS, LEASES, OPERATES, OR CONTROLS  
37 AN AFFECTED FACILITY CAN DEMONSTRATE, WITH CLEAR AND CONVINCING  
38 EVIDENCE, THAT THE POLLUTION CONTROL EQUIPMENT THAT IS NECESSARY TO  
39 ACHIEVE COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION IS  
40 UNATTAINABLE, DUE TO A LACK OF AVAILABLE SUPPLY, THE DEPARTMENT MAY

1 REDUCE OR WAIVE ANY PENALTY DUE TO THE FAILURE TO ATTAIN COMPLIANCE  
2 UNTIL THE POLLUTION CONTROL EQUIPMENT BECOMES ATTAINABLE.

3 (II) IF A PERSON THAT OWNS, LEASES, OPERATES, OR CONTROLS  
4 AN AFFECTED FACILITY CAN DEMONSTRATE, WITH CLEAR AND CONVINCING  
5 EVIDENCE, THAT THE POLLUTION CONTROL EQUIPMENT THAT IS NECESSARY TO  
6 ACHIEVE COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION HAS  
7 SIGNIFICANTLY INCREASED IN COST DUE TO THE LIMITED AMOUNT OF SUPPLY AND,  
8 AS A RESULT, MAY SIGNIFICANTLY INCREASE ELECTRIC RATES, THE DEPARTMENT  
9 MAY REDUCE OR WAIVE ANY PENALTY DUE TO THE FAILURE TO ATTAIN  
10 COMPLIANCE UNTIL THE SUPPLY OF POLLUTION CONTROL EQUIPMENT BECOMES  
11 AVAILABLE SO AS TO REASONABLY LOWER THE COST OF THE POLLUTION CONTROL  
12 EQUIPMENT.

13 (III) IN DETERMINING WHETHER TO REDUCE OR WAIVE ANY  
14 PENALTY UNDER THIS PARAGRAPH, THE DEPARTMENT SHALL CONSULT WITH THE  
15 PUBLIC SERVICE COMMISSION AS TO THE AVAILABILITY AND COST OF THE  
16 POLLUTION CONTROL EQUIPMENT.

17 (3) (I) A DECISION BY THE DEPARTMENT TO REDUCE OR WAIVE ANY  
18 PENALTY UNDER PARAGRAPH (2) OF THIS SUBSECTION SHALL BE SUBJECT TO  
19 JUDICIAL REVIEW BY ANY PERSON WHO MEETS THE THRESHOLD STANDING  
20 REQUIREMENTS UNDER FEDERAL CONSTITUTIONAL LAW.

21 (II) ANY ACTION TO REDUCE OR WAIVE ANY PENALTY UNDER  
22 PARAGRAPH (2) OF THIS SUBSECTION SHALL REMAIN IN EFFECT UNTIL JUDICIAL  
23 REVIEW IS FINAL.

24 ~~(4) (J) (1)~~ IF THE U.S. ENVIRONMENTAL PROTECTION AGENCY  
25 ALLOCATES EMISSION ALLOWANCES FOR MERCURY, SULFUR DIOXIDE, OR OXIDES OF  
26 NITROGEN TO THE STATE, THE ALLOWANCES SHALL BE TREATED AS FOLLOWS: AS  
27 PROVIDED IN THIS SUBSECTION.

28 ~~(4) (2)~~ A MERCURY ALLOWANCE MAY NOT BE ALLOCATED TO ANY  
29 PERSON THAT OWNS, LEASES, OPERATES, OR CONTROLS AN AFFECTED FACILITY OR  
30 OTHER SOURCE OF MERCURY EMISSIONS INTO THE ATMOSPHERE OR MERCURY  
31 DISCHARGES INTO THE WATERS OF THE STATE.

32 ~~(2) (3) (4)~~ THE DEPARTMENT SHALL HOLD ALL MERCURY  
33 ALLOWANCES ALLOCATED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY TO  
34 THE STATE.

35 ~~(II)~~ AT THE END OF EACH CALENDAR YEAR, THE DEPARTMENT  
36 SHALL INSTRUCT THE U.S. ENVIRONMENTAL PROTECTION AGENCY TO RETIRE  
37 PERMANENTLY THE ALLOWANCES.

38 ~~(3) (4)~~ THE DEPARTMENT SHALL ENSURE THAT ANY EMISSION  
39 ALLOWANCES FOR SULFUR DIOXIDE OR OXIDES OF NITROGEN ALLOCATED BY THE  
40 DEPARTMENT FOR AN AFFECTED FACILITY TO ANY PERSON THAT OWNS, LEASES,  
41 OPERATES, OR CONTROLS AN AFFECTED FACILITY FOR EMISSIONS ABOVE THE



1 ~~EMISSIONS LIMITATIONS ESTABLISHED UNDER SUBSECTIONS (A) THROUGH (D) OF~~  
2 ~~THIS SECTION MAY NOT BE MADE AVAILABLE FOR RESALE OR EXCHANGE.~~

3           (2)     THE DEPARTMENT:

4                     (I)     MAY NOT ALLOW THE APPLICATION OF ALLOWANCES TO THE  
5 COMPLIANCE OF ANY AFFECTED FACILITY WITH THE EMISSIONS LIMITATIONS  
6 ESTABLISHED UNDER SUBSECTIONS (A) THROUGH (D) OF THIS SECTION; BUT

7                     (II)    MAY ALLOW THE ALLOWANCES TO BE SOLD OR TRADED TO  
8 FACILITIES OUTSIDE THE STATE IN ACCORDANCE WITH ALLOWANCE TRADING  
9 PROGRAMS OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY.

10 2-1003.

11       (A)     BEGINNING DECEMBER 1, 2007, AND EACH YEAR THEREAFTER, A PERSON  
12 ~~WHO THAT~~ OWNS, LEASES, OPERATES, OR CONTROLS AN AFFECTED FACILITY SHALL  
13 SUBMIT TO THE DEPARTMENT, THE DEPARTMENT OF NATURAL RESOURCES, AND  
14 THE PUBLIC SERVICE COMMISSION, A REPORT THAT INCLUDES:

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

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

20               (3)     A CURRENT COMPLIANCE PLAN; AND

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

22       (B)     THE DEPARTMENT SHALL REVIEW THE INFORMATION SUBMITTED UNDER  
23 THIS SECTION TO DETERMINE WHETHER THE ACTUAL AND PROPOSED  
24 MODIFICATIONS AND PERMIT AND CONSTRUCTION SCHEDULES ARE ADEQUATE TO  
25 ACHIEVE THE EMISSIONS REQUIREMENTS UNDER THIS SUBTITLE AND SHALL MAKE  
26 THESE DETERMINATIONS PUBLICLY AVAILABLE ON AN ANNUAL BASIS.

27       (C)     (1)     NOTWITHSTANDING ANY OTHER PROVISION OF LAW AND SUBJECT  
28 TO PARAGRAPH (2) OF THIS SUBSECTION, THE DEPARTMENT SHALL ALLOW THE R.P.  
29 SMITH FACILITY, UNITS 3 AND 4, TO OPERATE WITHOUT COMPLYING WITH THE  
30 EMISSIONS REQUIREMENTS UNDER THIS SUBTITLE IF PJM INTERCONNECTION, INC.  
31 DETERMINES THAT THE TERMINATION OF OPERATION OF THE FACILITY WILL  
32 ADVERSELY AFFECT THE RELIABILITY OF ELECTRICAL SERVICE IN THE PJM  
33 REGION.

34               (2)     IF THE DEPARTMENT ALLOWS THE R.P. SMITH FACILITY, UNITS 3  
35 AND 4, TO OPERATE WITHOUT COMPLYING WITH THE EMISSIONS REQUIREMENTS  
36 UNDER THIS SUBTITLE IN ACCORDANCE WITH THIS SUBSECTION:

1 (I) THE FACILITY MAY NOT OPERATE AT EMISSIONS LEVELS  
2 GREATER THAN THE HIGHEST LEVEL MEASURED AT THE FACILITY DURING THE  
3 CALENDAR YEARS 2000 THROUGH 2004; AND

4 (II) THE DEPARTMENT SHALL REVIEW THE OPERATIONS OF THE  
5 FACILITY AND ADOPT REGULATIONS TO ESTABLISH AN ALTERNATIVE EMISSIONS  
6 REQUIREMENT FOR THE FACILITY.

7 2-1004.

8 BY JUNE 30, 2007, THE DEPARTMENT SHALL ADOPT REGULATIONS TO  
9 IMPLEMENT THE PROVISIONS OF THIS SUBTITLE.

10 2-1005.

11 ~~(A) THE CRIMINAL PENALTY PROVISIONS OF THIS SECTION ARE IN ADDITION~~  
12 ~~TO THE CIVIL PENALTY PROVISIONS PROVIDED UNDER § 2-610 OF THIS TITLE.~~

13 ~~(B) (1) A PERSON MAY NOT KNOWINGLY ACT OR FAIL TO ACT IN VIOLATION~~  
14 ~~OF THE PROVISIONS OF THIS SUBTITLE OR THE REGULATIONS ADOPTED UNDER~~  
15 ~~THIS SUBTITLE.~~

16 ~~(2) A PERSON WHO VIOLATES PARAGRAPH (1) OF THIS SUBSECTION IS~~  
17 ~~GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:~~

18 ~~(i) FOR A FIRST OFFENSE, A FINE NOT EXCEEDING \$25,000 OR~~  
19 ~~IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH; OR~~

20 ~~(ii) FOR A VIOLATION COMMITTED AFTER A FIRST CONVICTION~~  
21 ~~UNDER THIS SECTION, A FINE NOT EXCEEDING \$50,000 OR IMPRISONMENT NOT~~  
22 ~~EXCEEDING 2 YEARS OR BOTH.~~

23 ~~(3) EACH DAY ON WHICH A VIOLATION OCCURS IS A SEPARATE~~  
24 ~~VIOLATION UNDER THIS SUBSECTION.~~

25 ~~(C) A CRIMINAL PROSECUTION FOR A VIOLATION BROUGHT UNDER THIS~~  
26 ~~SECTION SHALL BE INSTITUTED WITHIN 3 YEARS AFTER THE VIOLATION WAS~~  
27 ~~COMMITTED.~~

28 (A) (1) THE ALLOWANCE PENALTY PROVISIONS OF THIS SECTION ARE IN  
29 ADDITION TO THE ADMINISTRATIVE AND CIVIL PENALTY PROVISIONS PROVIDED  
30 UNDER §§ 2-604, 2-609, 2-610, AND 2-610.1 OF THIS TITLE.

31 (2) EACH ONE-HALF OUNCE OF MERCURY AND EACH TON OF SULFUR  
32 DIOXIDE OR NITROGEN OXIDES EMITTED IN EXCESS OF THE LIMITATIONS SET  
33 FORTH OR IMPOSED IN ACCORDANCE WITH § 2-1002 OF THIS SUBTITLE SHALL BE A  
34 SEPARATE VIOLATION UNDER §§ 2-610 AND 2-610.1 OF THIS TITLE.

35 (3) FOR ANY VIOLATION OF ANY EMISSIONS LIMITATION SET FORTH OR  
36 IMPOSED UNDER § 2-1002(A) THROUGH (D) OF THIS SUBTITLE, THE DEPARTMENT

~~1 MAY, INSTEAD OF IMPOSING CIVIL OR ADMINISTRATIVE PENALTIES UNDER § 2-610  
2 OR § 2-610.1 OF THIS TITLE, ACCEPT THE VOLUNTARY SURRENDER OF SULFUR  
3 DIOXIDE OR OXIDES OF NITROGEN EMISSION ALLOWANCES.~~

4 (B) IF, IN ANY CALENDAR YEAR DURING THE PERIOD FROM JANUARY 1, 2010  
5 THROUGH DECEMBER 31, 2012, A PERSON FAILS TO ACHIEVE AND MAINTAIN FULL  
6 COMPLIANCE WITH THE EMISSIONS LIMITATIONS ESTABLISHED BY THE  
7 DEPARTMENT UNDER § 2-1002(E) OF THIS SUBTITLE, THE PERSON SHALL  
8 SURRENDER:

9 (1) ONE SULFUR DIOXIDE ALLOWANCE FOR EACH TON OF SULFUR  
10 DIOXIDE EMITTED IN EXCESS OF THE EMISSION RATE LIMITATION; AND

11 (2) ONE OXIDE OF NITROGEN ALLOWANCE FOR EVERY 2 TONS OF  
12 SULFUR DIOXIDE EMITTED IN EXCESS OF THE EMISSION RATE LIMITATION.

13 (C) IF, IN ANY CALENDAR YEAR, DURING THE PERIOD FROM JANUARY 1, 2009  
14 THROUGH DECEMBER 31, 2011, A PERSON FAILS TO ACHIEVE FULL COMPLIANCE  
15 WITH THE OXIDES OF NITROGEN EMISSION LIMITATIONS IN § 2-1002(A) AND (C) OF  
16 THIS SUBTITLE, THE PERSON SHALL SURRENDER ONE OXIDE OF NITROGEN  
17 ALLOWANCE FOR EACH TON OF OXIDES OF NITROGEN EMITTED IN EXCESS OF THE  
18 REQUIRED EMISSION RATE LIMITATION.

19 (D) A PERSON THAT SURRENDERS ALLOWANCES IN ACCORDANCE WITH  
20 SUBSECTIONS (B) OR (C) OF THIS SECTION SHALL SURRENDER THE ALLOWANCES TO  
21 THE DEPARTMENT'S SURRENDER ACCOUNT BY MARCH 1 OF THE YEAR FOLLOWING  
22 THE YEAR IN WHICH THE PERSON FAILED TO ACHIEVE AND MAINTAIN COMPLIANCE  
23 WITH THE APPLICABLE EMISSION LIMITATION.

#### 24 Article - Public Utility Companies

25 7-206.

26 (a) This section applies to the installation of pollution control equipment or a  
27 change in the method of operation at a generating station that a person performs in  
28 order to comply with Phase II pollution control requirements of the federal Clean Air  
29 Act.

30 (b) Any person that performs an installation or change in operation under  
31 subsection (a) of this section shall obtain prior review and approval of the Commission  
32 in accordance with:

33 (1) §§ 7-203, 7-207, and 7-208 of this subtitle; and

34 (2) the procedures set forth in § 7-205 of this subtitle and § 2-405 of the  
35 Environment Article.

36 (C) IN ORDER TO MEET COMPLIANCE DATES ESTABLISHED UNDER TITLE 2,  
37 SUBTITLE 10 OF THE ENVIRONMENT ARTICLE OR THE FEDERAL CLEAN AIR ACT, A  
38 COMMISSION REVIEW AND APPROVAL, OR PROCESSING OF AN APPLICATION FOR A

1 CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY UNDER § 7-207 OF THIS  
 2 SUBTITLE, SHALL BE EXPEDITED AND TAKE PRECEDENCE OVER OTHER REVIEW AND  
 3 APPROVAL BY THE COMMISSION IF THE REVIEW AND APPROVAL OR CERTIFICATE OF  
 4 PUBLIC CONVENIENCE AND NECESSITY IS REQUIRED:

5 (1) FOR POLLUTION CONTROL EQUIPMENT OR A CHANGE IN THE  
 6 METHOD OF OPERATION AT A GENERATING STATION; AND

7 (2) FOR COMPLIANCE WITH:

8 (I) TITLE 2, SUBTITLE 10 OF THE ENVIRONMENT ARTICLE;

9 (II) REGULATIONS ADOPTED BY THE DEPARTMENT OF THE  
 10 ENVIRONMENT UNDER TITLE 2, SUBTITLE 10 OF THE ENVIRONMENT ARTICLE; OR

11 (III) THE FEDERAL CLEAN AIR ACT.

12 **Article – State Government**

13 ~~9-2009.~~

14 (A) ~~THERE IS A MARYLAND CARBON REDUCTION FUND ADMINISTERED BY~~  
 15 ~~THE ADMINISTRATION.~~

16 (B) ~~THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT SUBJECT TO §~~  
 17 ~~7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.~~

18 (C) ~~THE TREASURER SHALL HOLD THE FUND SEPARATELY AND THE~~  
 19 ~~COMPTROLLER SHALL ACCOUNT FOR THE FUND.~~

20 (D) ~~THE FUND CONSISTS OF:~~

21 (1) ~~PROCEEDS FROM THE SALE OF ALLOWANCES UNDER § 2-1002(E)(2)~~  
 22 ~~OF THE ENVIRONMENT ARTICLE THE REGIONAL GREENHOUSE GAS INITIATIVE;~~

23 (2) ~~CRIMINAL FINES AND CIVIL PENALTIES IMPOSED UNDER TITLE 2,~~  
 24 ~~SUBTITLE 10 OF THE ENVIRONMENT ARTICLE;~~

25 (3) ~~MONEY APPROPRIATED IN THE STATE BUDGET TO THE FUND; AND~~

26 (4) ~~ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED FOR THE~~  
 27 ~~BENEFIT OF THE FUND.~~

28 (E) ~~THE FUND MAY BE USED ONLY:~~

29 (1) ~~TO IMPLEMENT STANDARDS AND TO PROVIDE INCENTIVES TO~~  
 30 ~~CONSUMERS SO THAT ENERGY EFFICIENT PRODUCTS AND SERVICES THAT ARE NOT~~  
 31 ~~BROADLY AVAILABLE AND USED BY STATE CONSUMERS BECOME STANDARD~~  
 32 ~~PRODUCT OFFERINGS;~~

1           (2)     ~~TO CAPTURE OPPORTUNITIES OTHERWISE LOST FOR~~  
 2 ~~COST-EFFECTIVE ENERGY EFFICIENT DESIGNS, MATERIALS, AND EQUIPMENT~~  
 3 ~~WHEN HOMES AND BUILDINGS ARE BUILT, REMODELED, OR RENOVATED, AND WHEN~~  
 4 ~~EQUIPMENT IS REPLACED;~~

5           (3)     ~~TO REDUCE PEAK DEMAND FOR ELECTRICITY AND IMPROVE~~  
 6 ~~SERVICE RELIABILITY FOR ALL CUSTOMERS THROUGH ENERGY EFFICIENCY~~  
 7 ~~MEASURES THAT ARE ESPECIALLY EFFECTIVE AT REDUCING PEAK SYSTEM~~  
 8 ~~DEMANDS; AND~~

9           (4)     ~~TO ENSURE THAT LOW INCOME CUSTOMERS CAN FULLY~~  
 10 ~~PARTICIPATE IN OPPORTUNITIES TO SAVE ELECTRICITY AND REDUCE THEIR~~  
 11 ~~ELECTRICITY COSTS; AND~~

12           (5)     ~~TO INCREASE THE DEVELOPMENT AND PRODUCTION OF~~  
 13 ~~ELECTRICITY FROM TIER 1 RENEWABLE ENERGY SOURCES IN THE STATE AS~~  
 14 ~~DEFINED IN § 7-701 OF THE PUBLIC UTILITY COMPANIES ARTICLE.~~

15     ~~SECTION 2. AND BE IT FURTHER ENACTED, That:~~

16     ~~(a)     The Department of the Environment shall contract with an academic~~  
 17 ~~institution in the State for a study of whether there will be an adverse impact on the~~  
 18 ~~State economy, the reliability of the State's energy supply, and the cost of energy for~~  
 19 ~~consumers as a result of the State's entry into and continued participation in the~~  
 20 ~~Regional Greenhouse Gas Initiative among mid-atlantic and northeast states.~~

21     ~~(b)     The study shall:~~

22           ~~(1)     evaluate whether the State's participation in the Regional Greenhouse~~  
 23 ~~Gas Initiative has or may have an adverse impact on:~~

24           ~~(i)     the preservation and enhancement of the economic welfare of the~~  
 25 ~~residents of the State;~~

26           ~~(ii)    the maintenance of a safe and reliable electric power supply in~~  
 27 ~~the State;~~

28           ~~(iii)   the adequacy of the energy supply in the State, including the~~  
 29 ~~potential for power plant shutdowns;~~

30           ~~(iv)    the ability of persons who own, lease, operate, or control an~~  
 31 ~~affected facility to compete in neighboring states; or~~

32           ~~(v)     electric rates for residents of the State; and~~

33           ~~(2)     take into consideration:~~

34           ~~(i)     the number of states that are included as full participants in the~~  
 35 ~~Regional Greenhouse Gas Initiative;~~

1                   (ii)     the mix of energy resources in the states that are included as full  
2 participants in the Regional Greenhouse Gas Initiative; and

3                   (iii)    the availability of credits among participating states.

4     (c)        On or before January 1, 2008, the Department shall report to the Governor  
5 and, in accordance with § 2-1246 of the State Government Article, the General  
6 Assembly on the findings of the study contracted for under this section.

7     SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take  
8 effect July 1, 2006.