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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**

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Senate action: Adopted with floor amendments  
Read second time: March 16, 2006

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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; encouraging~~  
15 ~~the State to join a successor organization if the Regional Greenhouse Gas~~  
16 ~~Initiative expires; requiring the Governor to report to the General Assembly~~  
17 ~~under certain circumstances; providing for the application of this Act;~~  
18 ~~authorizing affected facilities to determine the best method of compliance with~~  
19 ~~requirements of this Act; authorizing the Department to reduce or waive certain~~  
20 ~~penalties under certain circumstances; providing for judicial review of certain~~  
21 ~~decisions under certain circumstances; requiring the Department to treat~~  
22 ~~certain allowances allocated by the U.S. Environmental Protection Agency to the~~  
23 ~~State in a certain manner; requiring certain facilities to submit, to the~~  
24 ~~Department, the Department of Natural Resources, and the Public Service~~  
25 ~~Commission, a certain compliance report by a certain date; requiring the~~

1 Department to review certain information received in accordance with this Act;  
 2 requiring the Department to adopt certain regulations; providing for certain  
 3 administrative and civil penalties for certain violations; ~~providing for criminal~~  
 4 and civil penalties for a violation establishing certain allowance penalties for  
 5 certain violations of this Act; requiring the Public Service Commission to  
 6 expedite a certain review and approval or certificate of public convenience;  
 7 establishing a Maryland Carbon Reduction Fund in the Maryland Energy  
 8 Administration; providing for the operation and maintenance of the Fund;  
 9 providing that the Fund consists of certain fines ~~and penalties~~, certain proceeds,  
 10 and certain other money; defining certain terms; and generally relating to the  
 11 emissions of four pollutants from power plants.

12 BY adding to

13 Article - Environment

14 Section 2-1001 through 2-1005, inclusive, to be under the new subtitle "Subtitle

15 10. Healthy Air Act"

16 Annotated Code of Maryland

17 (1996 Replacement Volume and 2005 Supplement)

18 BY repealing and reenacting, with amendments,

19 Article - Public Utility Companies

20 Section 7-206

21 Annotated Code of Maryland

22 (1998 Replacement Volume and 2005 Supplement)

23 BY adding to

24 Article - State Government

25 Section 9-2009

26 Annotated Code of Maryland

27 (2004 Replacement Volume and 2005 Supplement)

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

30 **Article - Environment**

31 **SUBTITLE 10. HEALTHY AIR ACT.**

32 2-1001.

33 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
 34 INDICATED.

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

1 (2) "AFFECTED FACILITY" INCLUDES:

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

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

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

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

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

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

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

9 (3) "AFFECTED FACILITY" DOES NOT INCLUDE ANY ELECTRICITY  
10 GENERATING UNIT:

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

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

17 (C) "ALLOWANCE" MEANS:

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

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

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

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

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

1 2-1002.

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

5 (1) ~~24,303 TONS OF OXIDES OF NITROGEN; AND~~

6 (2) ~~39,925 TONS OF SULFUR DIOXIDE. AFFECTED FACILITIES~~  
7 COLLECTIVELY MAY NOT EMIT MORE THAN 21,475 TONS OF OXIDES OF NITROGEN  
8 PER YEAR.

9 (B) (1) ON OR AFTER JANUARY 1, 2010, AFFECTED FACILITIES  
10 COLLECTIVELY MAY NOT EMIT MORE THAN 48.618 TONS OF SULFUR DIOXIDE PER  
11 YEAR.

12 (2) THE DEPARTMENT MAY SET AN INTERIM STAGE REDUCTION FOR  
13 SULFUR DIOXIDE.

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

17 (1) ~~13,339 TONS OF OXIDES OF NITROGEN; AND~~

18 (2) ~~24,645 TONS OF SULFUR DIOXIDE. AFFECTED FACILITIES~~  
19 COLLECTIVELY MAY NOT EMIT MORE THAN 17,926 TONS OF OXIDES OF NITROGEN  
20 PER YEAR.

21 (D) ON OR AFTER JANUARY 1, 2015, AFFECTED FACILITIES COLLECTIVELY  
22 MAY NOT EMIT MORE THAN 32,322 TONS OF SULFUR DIOXIDE PER YEAR.

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

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

29 (II) AN AFFECTED FACILITY MAY EMIT MORE THAN THE EMISSIONS  
30 BUDGET SET FOR THE FACILITY UNDER PARAGRAPH (1) OF THIS SUBSECTION AS  
31 LONG AS THE PERSON OWNING, LEASING, OPERATING, OR CONTROLLING THE  
32 AFFECTED FACILITY DOES NOT EXCEED THE CUMULATIVE EMISSIONS BUDGET FOR  
33 ALL OF THE AFFECTED FACILITIES THAT THE PERSON OWNS, LEASES, OPERATES, OR  
34 CONTROLS.

35 (3) IF AN AFFECTED FACILITY PERMANENTLY CEASES OPERATION, THE  
36 DEPARTMENT:

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

4 (II) MAY NOT INCREASE EXISTING EMISSIONS BUDGETS FOR ALL  
 5 OTHER AFFECTED FACILITIES.

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

8 ~~(+)~~ (+) ACHIEVE A MINIMUM ~~90%~~ 80% CAPTURE OF INLET MERCURY FOR  
 9 EACH AFFECTED FACILITY, CALCULATED AS A ROLLING 12-MONTH AVERAGE; AND,

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

14 ~~(2)~~ (3) A PERSON THAT OWNS, LEASES, OPERATES, OR CONTROLS AN  
 15 AFFECTED FACILITY SHALL DEMONSTRATE COMPLIANCE WITH PARAGRAPH (1) OF  
 16 THIS SUBSECTION THROUGH THE DIRECT MONITORING OF MERCURY EMISSIONS ON  
 17 A CONTINUOUS BASIS, ACCORDING TO THE REQUIREMENTS OF 40 C.F.R. PART 60,  
 18 60.49A(P), 60.4170-60.4176, AND 40 C.F.R. PART 75, SUBPART I.

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

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

24 ~~(+)~~ (+) THE GOVERNOR SHALL INCLUDE THE STATE AS A FULL  
 25 PARTICIPANT IN THE REGIONAL GREENHOUSE GAS INITIATIVE AMONG  
 26 MID-ATLANTIC AND NORTHEAST STATES; OR,

27 ~~(2)~~ (2) THE DEPARTMENT SHALL ADOPT REGULATIONS TO REQUIRE A 10%  
 28 REDUCTION OF CARBON DIOXIDE EMISSIONS FROM AFFECTED FACILITIES BY 2018,  
 29 THROUGH AN IN-STATE SYSTEM FOR TRADING AND TRACKING CARBON DIOXIDE  
 30 EMISSIONS IN ACCORDANCE WITH SUBSECTION (F) OF THIS SECTION.

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

33 ~~(1)~~ (1) CREATE A BASELINE EMISSION LEVEL BY ESTABLISHING  
 34 ALLOWANCES FOR THE EMISSION OF CARBON DIOXIDE EQUIVALENT TO THE 2004  
 35 CARBON DIOXIDE EMISSIONS OF THE AFFECTED FACILITIES AS FOLLOWS:

36 ~~(1)~~ (1) THE DEPARTMENT SHALL GRANT UP TO 75% OF THE  
 37 ALLOWANCES TO THE OWNERS OF THE AFFECTED FACILITIES IN PROPORTION TO  
 38 THEIR 2004 EMISSIONS;

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

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

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

12                  (V)     ~~FOR THE PURPOSES OF THIS SUBSECTION, CARBON DIOXIDE~~  
13 ~~EMISSIONS SHALL BE CALCULATED USING FUEL USE DATA AS REPORTED ON FORM~~  
14 ~~906, SUBMITTED TO THE U.S. ENERGY INFORMATION ADMINISTRATION; AND~~

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

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

23                  (I)     ~~A LOAD-SERVING ENTITY IN THE STATE THAT CONTRACTS TO~~  
24 ~~PURCHASE ELECTRIC POWER GENERATED IN A STATE OTHER THAN MARYLAND OR~~  
25 ~~STATES PARTICIPATING IN THE REGIONAL GREENHOUSE GAS INITIATIVE IN ORDER~~  
26 ~~TO REPLACE ELECTRIC POWER FORMERLY PURCHASED FROM AN AFFECTED~~  
27 ~~FACILITY, SHALL OFFSET THE CARBON DIOXIDE EMISSIONS OF THAT POWER; AND~~

28                  (II)    ~~THE AMOUNT OF CARBON DIOXIDE EMISSIONS ATTRIBUTED TO~~  
29 ~~POWER GENERATED IN A STATE OTHER THAN MARYLAND OR A STATE~~  
30 ~~PARTICIPATING IN THE REGIONAL GREENHOUSE GAS INITIATIVE SHALL BE~~  
31 ~~CALCULATED ACCORDING TO THE AVERAGE CARBON DIOXIDE EMISSIONS OF THE~~  
32 ~~ELECTRICITY GENERATED BY THE PERSON SELLING THE POWER IN THE REGION IN~~  
33 ~~WHICH SUCH POWER IS GENERATED.~~

34                  (2)     IF THE DEPARTMENT, IN CONSULTATION WITH THE PUBLIC SERVICE  
35 COMMISSION, DETERMINES THAT PARTICIPATION IN THE REGIONAL GREENHOUSE  
36 GAS INITIATIVE WILL COMPROMISE THE RELIABILITY OF THE ELECTRIC SYSTEM IN  
37 THE STATE, THE STATE MAY WITHDRAW FROM THE INITIATIVE AS PROVIDED IN THE  
38 DECEMBER 20, 2005 MEMORANDUM OF UNDERSTANDING OF THE INITIATIVE, AT ANY  
39 TIME AFTER JANUARY 1, 2009.

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

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

8           (I)     WHY PARTICIPATION CEASED; AND

9           (II)    A PLAN TO REDUCE CARBON DIOXIDE EMISSIONS FROM POWER  
10 PLANTS IN THE STATE.

11    ~~(G)~~   (H)     THE PROVISIONS OF THIS SECTION MAY NOT BE CONSTRUED TO  
12 AFFECT EXISTING OR FUTURE EMISSIONS REQUIREMENTS, STANDARDS, OR  
13 LIMITATIONS IMPOSED ON ELECTRICITY GENERATORS BY ANY OTHER EXISTING OR  
14 FUTURE PROVISION OF LAW THAT WOULD RESULT IN EMISSIONS REDUCTIONS IN  
15 ADDITION TO THOSE REQUIRED UNDER THIS SECTION.

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

20           (2)     (I)     IF A PERSON THAT OWNS, LEASES, OPERATES, OR CONTROLS  
21 AN AFFECTED FACILITY CAN DEMONSTRATE, WITH CLEAR AND CONVINCING  
22 EVIDENCE, THAT THE POLLUTION CONTROL EQUIPMENT THAT IS NECESSARY TO  
23 ACHIEVE COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION IS  
24 UNATTAINABLE, DUE TO A LACK OF AVAILABLE SUPPLY, THE DEPARTMENT MAY  
25 REDUCE OR WAIVE ANY PENALTY DUE TO THE FAILURE TO ATTAIN COMPLIANCE  
26 UNTIL THE POLLUTION CONTROL EQUIPMENT BECOMES ATTAINABLE.

27           (II)    IF A PERSON THAT OWNS, LEASES, OPERATES, OR CONTROLS  
28 AN AFFECTED FACILITY CAN DEMONSTRATE, WITH CLEAR AND CONVINCING  
29 EVIDENCE, THAT THE POLLUTION CONTROL EQUIPMENT THAT IS NECESSARY TO  
30 ACHIEVE COMPLIANCE WITH THE REQUIREMENTS OF THIS SECTION HAS  
31 SIGNIFICANTLY INCREASED IN COST DUE TO THE LIMITED AMOUNT OF SUPPLY AND,  
32 AS A RESULT, MAY SIGNIFICANTLY INCREASE ELECTRIC RATES, THE DEPARTMENT  
33 MAY REDUCE OR WAIVE ANY PENALTY DUE TO THE FAILURE TO ATTAIN  
34 COMPLIANCE UNTIL THE SUPPLY OF POLLUTION CONTROL EQUIPMENT BECOMES  
35 AVAILABLE SO AS TO REASONABLY LOWER THE COST OF THE POLLUTION CONTROL  
36 EQUIPMENT.

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

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

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

8       (+)    (J)    (1)    IF THE U.S. ENVIRONMENTAL PROTECTION AGENCY  
9 ALLOCATES EMISSION ALLOWANCES FOR MERCURY, SULFUR DIOXIDE, OR OXIDES OF  
10 NITROGEN TO THE STATE, THE ALLOWANCES SHALL BE TREATED ~~AS FOLLOWS:~~ AS  
11 PROVIDED IN THIS SUBSECTION.

12           (+)    (2)    A MERCURY ALLOWANCE MAY NOT BE ALLOCATED TO ANY  
13 PERSON THAT OWNS, LEASES, OPERATES, OR CONTROLS AN AFFECTED FACILITY OR  
14 OTHER SOURCE OF MERCURY EMISSIONS INTO THE ATMOSPHERE OR MERCURY  
15 DISCHARGES INTO THE WATERS OF THE STATE.

16           (±)    (3)    (1)    THE DEPARTMENT SHALL HOLD ALL MERCURY  
17 ALLOWANCES ALLOCATED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY TO  
18 THE STATE.

19                   (II)    AT THE END OF EACH CALENDAR YEAR, THE DEPARTMENT  
20 SHALL INSTRUCT THE U.S. ENVIRONMENTAL PROTECTION AGENCY TO RETIRE  
21 PERMANENTLY THE ALLOWANCES.

22           (±)    (4)    THE DEPARTMENT SHALL ENSURE THAT ANY EMISSION  
23 ALLOWANCES FOR SULFUR DIOXIDE OR OXIDES OF NITROGEN ALLOCATED ~~BY THE~~  
24 ~~DEPARTMENT FOR AN AFFECTED FACILITY~~ TO ANY PERSON THAT OWNS, LEASES,  
25 OPERATES, OR CONTROLS AN AFFECTED FACILITY FOR EMISSIONS ABOVE THE  
26 EMISSIONS LIMITATIONS ESTABLISHED UNDER SUBSECTIONS (A) THROUGH (D) OF  
27 THIS SECTION MAY NOT BE MADE AVAILABLE FOR RESALE OR EXCHANGE.

28 2-1003.

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

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

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

38           (3)    A CURRENT COMPLIANCE PLAN; AND



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

2 (B) THE DEPARTMENT SHALL REVIEW THE INFORMATION SUBMITTED UNDER  
3 THIS SECTION TO DETERMINE WHETHER THE ACTUAL AND PROPOSED  
4 MODIFICATIONS AND PERMIT AND CONSTRUCTION SCHEDULES ARE ADEQUATE TO  
5 ACHIEVE THE EMISSIONS REQUIREMENTS UNDER THIS SUBTITLE AND SHALL MAKE  
6 THESE DETERMINATIONS PUBLICLY AVAILABLE ON AN ANNUAL BASIS.

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 this Act shall take effect  
16 July 1, 2006.