

**Department of Legislative Services**  
Maryland General Assembly  
2006 Session

**FISCAL AND POLICY NOTE**

House Bill 20 (Delegate Hubbard)  
Environmental Matters

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

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This bill prohibits the Maryland Department of the Environment (MDE), when modifying its New Source Review (NSR) regulations, from altering any of the following if they existed in regulation on December 30, 2002: (1) the applicability determination for NSR; (2) the definition of modification, major modification, routine maintenance, repair, or replacement; (3) the calculation methodology, thresholds, or other NSR procedures; and (4) any other requirement or definition of the NSR regulations. The bill provides specified exceptions to that prohibition.

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**Fiscal Summary**

**State Effect:** Potential loss of significant federal transportation funds if the bill results in disapproval of the State Implementation Plan (SIP) by the U.S. Environmental Protection Agency (EPA). Expenditures would not be materially affected; any increase in workload could be handled with existing resources.

**Local Effect:** The bill would not directly affect local operations or finances.

**Small Business Effect:** Potential meaningful.

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**Analysis**

**Bill Summary:** MDE may alter the NSR regulations if the amendment or revision does not exempt, relax, or reduce any requirement related to: (1) obtaining NSR or other permits to construct, before beginning construction; (2) using best control technology; (3) conducting an air quality impact analysis; (4) conducting recordkeeping, monitoring, and

reporting, under specified conditions; (5) regulating any air pollutant covered by the NSR regulations; and (6) public participation prior to issuance of a permit to construct.

MDE may alter a regulation that exempts or reduces one of those requirements if MDE makes its decision based on substantial evidence that the new regulation: (1) replaces an existing regulation that caused a risk to public health or safety; (2) replaces an existing regulation that is unworkable due to engineering or other technical problems; (3) amends an existing regulation that otherwise will cause substantial hardship to a business, industry, or category of sources, under specified conditions; (4) is a temporary regulation necessary to respond to an emergency, as provided in the bill; or (5) will not impair or impede continued maintenance of all National Ambient Air Quality Standards (NAAQS) or progress toward achieving attainment of those standards. In addition, MDE may only alter a regulation that exempts or reduces one of those requirements if it will not exempt or reduce the obligation of any stationary source that was considered a major source under the NSR regulations existing on December 30, 2002, to obtain a permit or to meet best available control technology requirements.

The bill authorizes MDE to make changes contained within a construction permit issued prior to the bill's effective date under specified conditions.

**Background/Current Law:** MDE's Air and Radiation Management Administration operates the State's air pollution control programs under the framework established by the federal Clean Air Act (CAA). As amended in 1990, CAA requires all areas of the country to achieve NAAQS and to develop implementation plans to achieve those standards; CAA provides penalties for states failing to achieve the standards. Portions of Maryland have been designated as nonattainment areas for ozone and fine particulate matter, meaning that levels of these pollutants in the ambient air occasionally exceed the federal standards. Under CAA, any new major stationary source in polluted areas must obtain NSR approval prior to construction. The primary purpose for obtaining this approval is to ensure that new major sources will not worsen existing air pollution levels or impede the State's efforts to achieve compliance with NAAQS.

Responding to concerns that the NSR program was overly complex, EPA amended the program in two stages. The first rule, announced in late 2002, relaxed applicability criteria; the second rule, announced in 2003, modified the definition of "routine maintenance, repair, and replacement" (RMRR) activities at existing sources. EPA contends that these changes will offer facilities greater flexibility to improve and modernize their operations, provide incentives to install state-of-the-art pollution controls, and allow for more accurate calculations of actual emissions. The two national associations that represent the nation's state and local air pollution control agencies (the State and Territorial Air Pollution Program Administrators and the Association of Local

Air Pollution Control Officials), however, have been critical of the changes. Many states, including Maryland, as well as environmental groups, claim that the amendments will extend the life of dirty sources and allow the installation of new power generation without adequate controls or notice to states.

Both of the NSR rules were met with legal challenges from several states, including Maryland. On December 24, 2003, the District of Columbia (D.C.) Circuit Court of Appeals stayed the effective date of the 2003 rule modifying the RMRR definition. On June 30, 2004, EPA granted a request to reconsider certain aspects of the equipment replacement rule, opening a public comment period allowing further public input on certain aspects of the NSR program. On August 9, 2004, EPA and the U.S. Department of Justice filed the federal government's brief in the lawsuits brought to challenge EPA's 2002 rule. In June 2005, the D.C. Circuit Court of Appeals vacated portions of the EPA proposal. Also in June 2005, the courts ruled that EPA must use a consistent definition of "modification" for the purposes of both NSR and the New Source Performance Standards Program. On October 20, 2005, EPA proposed another set of NSR rules regarding the emissions test for existing electric generating units subject to the regulations governing the Prevention of Significant Deterioration and nonattainment NSR programs.

MDE advises that EPA allows states to meet the NSR requirements with "different but equivalent" regulations. After reviewing the decisions of the court and EPA's subsequent actions, MDE advises that it is proposing to adopt some, but not all, of EPA's reform regulations that were not vacated or remanded by the D.C. Circuit Court of Appeals.

In 2003 the California legislature approved a bill that would keep the state's NSR standards as they were before the recent changes made by the Bush Administration. This bill was based on the California legislation.

**State Fiscal Effect:** This bill limits MDE's ability to modify its NSR regulations. These regulations, which have been approved by EPA, constitute Maryland's NSR program, a mandatory element of Maryland's SIP. According to MDE, Maryland's NSR program must comply with federal NSR requirements in order to maintain EPA approval for inclusion into the SIP. If EPA finds that Maryland does not have the proper NSR regulation in place as part of its SIP, EPA can disapprove Maryland's SIP, setting into motion several federal measures that could result in a loss of significant federal highway funds as well as have a significant impact on Maryland businesses. In addition, EPA could impose a federal implementation plan, which would require that EPA manage Maryland's NSR program under federal rules.

MDE advises that, although the bill appears to focus specifically on safeguarding NSR regulations from the recent federal changes, the bill might limit MDE's ability to make

regulatory changes intended to streamline or otherwise improve the program. MDE further advises that, even though the bill authorizes MDE to make changes contained within a construction permit issued prior to the bill's effective date under specified conditions, the bill could prohibit the department from making all necessary changes to requirements and conditions contained within such permits. In addition, although the bill includes exemptions for amendments that do not relax or reduce requirements related to specified air quality protections, MDE advises that it is not clear how such determinations would be made. Accordingly, MDE may face an increased administrative burden as a result of the bill; however, any increase in workload would be handled with existing resources.

**Small Business Effect:** If the bill results in the disapproval of Maryland's SIP, it could have a significant fiscal impact on Maryland businesses. Specifically, new major projects or major expansions to existing projects would need to secure more additional emission offsets than they are currently required to secure. According to MDE, each ton of offsets now costs between \$5,000 and \$10,000. Maryland businesses could also be affected to the extent EPA imposes a federal implementation plan.

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### **Additional Information**

**Prior Introductions:** HB 84 of 2005 received an unfavorable report from the House Environmental Matters Committee. Similar legislation was introduced as HB 153 of 2004; the bill received an unfavorable report from the House Environmental Matters Committee.

**Cross File:** None.

**Information Source(s):** Maryland Department of the Environment, National Conference of State Legislatures, U.S. Environmental Protection Agency, Department of Legislative Services

**Fiscal Note History:** First Reader - January 17, 2006  
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