

SENATE BILL 824

M3, M1

9lr2003
CF 9lr1622

By: **Senators Frosh, Brochin, Harrington, Pinsky, Raskin, and Rosapepe**

Introduced and read first time: February 6, 2009

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Community Environmental Protection Act of 2009**

3 FOR the purpose of providing certain persons and associations standing in certain
4 claims under certain circumstances; providing judicial review of certain final
5 administrative decisions under certain circumstances; providing certain persons
6 standing to participate in certain administrative appeal proceedings under
7 certain circumstances; authorizing certain persons to bring certain civil actions
8 under certain circumstances; authorizing a court to award certain costs under
9 certain circumstances; authorizing a court to grant certain relief under certain
10 circumstances; authorizing a court to impose certain civil penalties under
11 certain circumstances; authorizing certain persons to intervene in certain
12 proceedings under certain circumstances; establishing that this Act supersedes
13 certain laws, ordinances, regulations, and judicial interpretations to the extent
14 of certain inconsistencies; defining certain terms; making the provisions of this
15 Act severable; declaring the intent of the General Assembly; and generally
16 relating to enforcing laws related to the environment and natural resources.

17 BY adding to

18 Article – Environment

19 Section 1–901 through 1–908 to be under the new subtitle “Subtitle 9.
20 Community Environmental Protection Act”

21 Annotated Code of Maryland

22 (2007 Replacement Volume and 2008 Supplement)

23 BY adding to

24 Article – Natural Resources

25 Section 8–1815.2

26 Annotated Code of Maryland

27 (2007 Replacement Volume and 2008 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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 9. COMMUNITY ENVIRONMENTAL PROTECTION ACT.**

5 **1-901.**

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

8 (B) "ADMINISTRATIVE DECISION" MEANS ANY PERMIT, LICENSE,
9 RENEWAL, OR OTHER FORM OF AUTHORIZATION, OR ANY STANDARD,
10 ORDINANCE, RULE, REGULATION, OR ORDER THAT IS ISSUED:

11 (1) BY ANY STATE AGENCY OR UNIT, OR BY ANY UNIT OF THE
12 GOVERNMENT OF A LOCAL JURISDICTION, INCLUDING ITS BOARD OF APPEALS;

13 (2) IN ACCORDANCE WITH, OR UNDER THE AUTHORITY OF, THIS
14 ARTICLE OR:

15 (I) TITLE 1, SUBTITLE 3 OF THE NATURAL RESOURCES
16 ARTICLE;

17 (II) TITLE 5, SUBTITLE 16 OF THE NATURAL RESOURCES
18 ARTICLE; OR

19 (III) TITLE 8, SUBTITLE 18 OF THE NATURAL RESOURCES
20 ARTICLE.

21 (C) "ASSOCIATION" MEANS AN ASSOCIATION, CORPORATION, OR OTHER
22 ORGANIZATION THAT HAS A RECOGNIZED GROUP NAME AND CONSISTS OF TWO
23 OR MORE MEMBERS JOINED BY MUTUAL CONSENT FOR A COMMON NONPROFIT
24 PURPOSE.

25 (D) (1) "INJURY IN FACT" MEANS AN INVASION OF A LEGALLY
26 PROTECTED INTEREST THAT IS:

27 (I) CONCRETE AND PARTICULARIZED;

28 (II) ACTUAL OR IMMINENT; AND

29 (III) NOT CONJECTURAL OR HYPOTHETICAL.

1 **(2) "INJURY IN FACT" INCLUDES:**

2 **(I) A PROPERTY RIGHT OR PERSONAL INTEREST THAT IS**
3 **DISTINCT FROM, OR SPECIFICALLY AFFECTED IN A WAY THAT IS DISTINCT**
4 **FROM, A PROPERTY RIGHT OR PERSONAL INTEREST OF THE GENERAL PUBLIC;**
5 **AND**

6 **(II) A NEGATIVE IMPACT, OR THE THREAT OF A NEGATIVE**
7 **IMPACT, TO THE PUBLIC HEALTH OR TO THE USE AND ENJOYMENT OF A**
8 **NATURAL RESOURCE, INCLUDING A NEGATIVE IMPACT TO AESTHETIC,**
9 **RECREATIONAL, CONSERVATIONAL, AND ECONOMIC INTERESTS THAT MAY BE**
10 **SHARED AMONG COMMUNITY MEMBERS.**

11 **(E) "POLITICAL SUBDIVISION" MEANS A COUNTY, THE CITY OF**
12 **BALTIMORE, A MULTICOUNTY AGENCY, MUNICIPAL CORPORATION, SINGLE**
13 **PURPOSE DISTRICT, AND SOIL CONSERVATION OR SANITARY DISTRICT.**

14 **(F) "SECRETARY" MEANS THE SECRETARY OF ANY STATE AGENCY,**
15 **APPOINTED BY THE GOVERNOR.**

16 **1-902.**

17 **(A) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A PERSON**
18 **HAS STANDING IN CLAIMS ARISING UNDER THIS ARTICLE OR TITLE 1, SUBTITLE**
19 **3, TITLE 5, SUBTITLE 16, OR TITLE 8, SUBTITLE 18 OF THE NATURAL**
20 **RESOURCES ARTICLE IF THE PERSON SUFFERS AN INJURY IN FACT THAT:**

21 **(I) IS FAIRLY TRACEABLE TO THE CHALLENGED ACTION OF**
22 **THE DEFENDANT; AND**

23 **(II) IS LIKELY TO BE REDRESSED BY THE REQUESTED**
24 **RELIEF.**

25 **(2) AN INTEREST OR INJURY ASSERTED UNDER THIS SECTION**
26 **SHALL FALL WITHIN THE ZONE OF INTERESTS SOUGHT TO BE PROTECTED BY**
27 **THIS ARTICLE AND TITLE 1, SUBTITLE 3, TITLE 5, SUBTITLE 16, OR TITLE 8,**
28 **SUBTITLE 18 OF THE NATURAL RESOURCES ARTICLE.**

29 **(B) IN ADDITION TO SUBSECTION (A) OF THIS SECTION, AN**
30 **ASSOCIATION HAS STANDING IN CLAIMS ARISING UNDER THIS ARTICLE OR**
31 **TITLE 1, SUBTITLE 3, TITLE 5, SUBTITLE 16, OR TITLE 8, SUBTITLE 18 OF THE**
32 **NATURAL RESOURCES ARTICLE IF:**

1 (1) ONE OR MORE MEMBERS OF THE ASSOCIATION HAVE
2 STANDING UNDER SUBSECTION (A) OF THIS SECTION;

3 (2) THE INTERESTS THAT THE ASSOCIATION SEEKS TO PROTECT
4 ARE GERMANE TO ITS PURPOSES; AND

5 (3) NEITHER THE CLAIM ASSERTED NOR THE RELIEF REQUESTED
6 REQUIRES THE PARTICIPATION OF THE MEMBER.

7 **1-903.**

8 (A) A FINAL ADMINISTRATIVE DECISION IS SUBJECT TO JUDICIAL
9 REVIEW AT THE REQUEST OF A PERSON THAT:

10 (1) MEETS THE STANDING REQUIREMENTS UNDER § 1-902 OF
11 THIS SUBTITLE; AND

12 (2) SUBJECT TO SUBSECTION (B) OF THIS SECTION,
13 PARTICIPATED IN A PUBLIC PARTICIPATION PROCESS THROUGH THE
14 SUBMISSION OF WRITTEN OR ORAL COMMENTS IF PUBLIC PARTICIPATION IS
15 REQUIRED BY STATUTE OR REGULATION.

16 (B) AN INDIVIDUAL MEMBER OF AN ASSOCIATION THAT MEETS THE
17 STANDING REQUIREMENTS UNDER § 1-902 OF THIS SUBTITLE DOES NOT NEED
18 TO HAVE PARTICIPATED IN A PUBLIC PARTICIPATION PROCESS IF THE
19 ASSOCIATION PARTICIPATED IN THE PUBLIC PARTICIPATION PROCESS.

20 **1-904.**

21 A PERSON HAS STANDING TO PARTICIPATE IN AN ADMINISTRATIVE
22 APPEAL PROCEEDING IF THE PERSON:

23 (1) PARTICIPATED IN A PUBLIC PARTICIPATION PROCESS
24 THROUGH THE SUBMISSION OF WRITTEN OR ORAL COMMENTS; OR

25 (2) SUFFERS AN INJURY IN FACT ARISING FROM THE
26 UNDERLYING ADMINISTRATIVE DECISION.

27 **1-905.**

28 (A) A PERSON THAT HAS STANDING UNDER § 1-902 OF THIS SUBTITLE
29 MAY BRING A CIVIL ACTION ON THE PERSON'S OWN BEHALF TO CHALLENGE A
30 FINAL ADMINISTRATIVE DECISION OF A SECRETARY OR ANY OTHER PRESIDING

1 OFFICER OR UNIT OF THE STATE, LOCAL GOVERNMENT, OR POLITICAL
2 SUBDIVISION.

3 (B) IF A FINAL ADMINISTRATIVE DECISION DEFERS PERFORMANCE OF A
4 NONDISCRETIONARY STATUTORY ACTION TO A LATER TIME, A PERSON THAT
5 HAS STANDING UNDER § 1-902 OF THIS SUBTITLE MAY CHALLENGE THE
6 DEFERRAL IN ACCORDANCE WITH THIS SECTION.

7 (C) IN ADDITION TO THE AUTHORITY PROVIDED UNDER § 10-222 OF
8 THE STATE GOVERNMENT ARTICLE, IN AN ACTION UNDER THIS SECTION, THE
9 COURT MAY:

10 (1) VACATE AND REMAND THE CASE TO THE APPROPRIATE
11 AGENCY OR GOVERNMENT ENTITY FOR RECONSIDERATION; AND

12 (2) COMPEL AGENCY ACTION IF ACTION IS UNREASONABLY
13 DELAYED.

14 (D) AN ACTION UNDER THIS SECTION SHALL BE BROUGHT IN THE
15 CIRCUIT COURT OF THE COUNTY WHERE THE ALLEGED CONDITION, ACTIVITY,
16 OR FAILURE IS OCCURRING, HAS OCCURRED, OR IS LIKELY TO OCCUR.

17 (E) (1) IN THIS SUBSECTION, "COSTS OF LITIGATION" INCLUDES
18 REASONABLE ATTORNEY'S FEES, COURT COSTS, AND EXPERT WITNESS FEES.

19 (2) IN AN ACTION UNDER THIS SECTION, THE COURT MAY AWARD
20 TO THE PREVAILING PARTY THE COSTS OF LITIGATION.

21 (3) IF A PARTY TO AN ACTION UNDER THIS SECTION ACTS IN BAD
22 FAITH OR WITHOUT SUBSTANTIAL JUSTIFICATION IN MAINTAINING OR
23 DEFENDING THE ACTION, THE COURT MAY AWARD TO THE ADVERSE PARTY THE
24 COSTS OF LITIGATION.

25 (F) (1) JUDICIAL REVIEW OF DISPUTED ISSUES OF FACT SHALL BE
26 CONFINED TO THE ADMINISTRATIVE RECORD FOR JUDICIAL REVIEW
27 SUPPLEMENTED BY ADDITIONAL EVIDENCE TAKEN IN ACCORDANCE WITH THIS
28 SUBSECTION.

29 (2) THE COURT MAY ORDER A SECRETARY OR OTHER PRESIDING
30 OFFICER OR UNIT OF THE STATE, LOCAL GOVERNMENT, OR POLITICAL
31 SUBDIVISION TO TAKE ADDITIONAL EVIDENCE ON TERMS THAT THE COURT
32 CONSIDERS PROPER IF:

1 (I) BEFORE THE HEARING DATE IN COURT, A PARTY
2 APPLIES FOR LEAVE TO OFFER ADDITIONAL EVIDENCE; AND

3 (II) THE COURT IS SATISFIED THAT THE EVIDENCE IS
4 MATERIAL AND THAT THERE WERE GOOD REASONS FOR THE FAILURE TO OFFER
5 THE EVIDENCE IN THE ADMINISTRATIVE PROCEEDING BEFORE THE PRESIDING
6 OFFICER.

7 (3) ON THE BASIS OF ADDITIONAL EVIDENCE, THE FINAL
8 ADMINISTRATIVE DECISION MAKER MAY MODIFY THE FINDINGS AND DECISION.

9 (4) THE FINAL ADMINISTRATIVE DECISION MAKER SHALL FILE
10 WITH THE REVIEWING COURT, AS PART OF THE RECORD:

11 (I) THE ADDITIONAL EVIDENCE; AND

12 (II) ANY MODIFICATIONS OF THE ADMINISTRATIVE
13 FINDINGS OR DECISION.

14 **1-906.**

15 (A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, A PERSON THAT
16 HAS STANDING UNDER § 1-902 OF THIS SUBTITLE MAY BRING A CIVIL ACTION
17 ON THE PERSON'S OWN BEHALF:

18 (1) AGAINST ANY PERSON OR GOVERNMENTAL ENTITY THAT IS
19 ALLEGED TO HAVE VIOLATED OR TO BE IN VIOLATION OF:

20 (I) ANY STANDARD OR LIMITATION THAT IS REQUIRED BY
21 THIS ARTICLE OR TITLE 1, SUBTITLE 3, TITLE 5, SUBTITLE 16, OR TITLE 8,
22 SUBTITLE 18 OF THE NATURAL RESOURCES ARTICLE; OR

23 (II) AN ORDER OR PERMIT ISSUED BY A SECRETARY OR ANY
24 OTHER OFFICER OR AGENCY OF THE STATE, LOCAL GOVERNMENT, OR
25 POLITICAL SUBDIVISION; OR

26 (2) AGAINST A SECRETARY OR ANY OTHER OFFICER OR AGENCY
27 OF THE STATE, LOCAL GOVERNMENT, OR POLITICAL SUBDIVISION WHERE
28 THERE IS ALLEGED A FAILURE OF THE SECRETARY, OFFICER, OR AGENCY TO
29 PERFORM ANY NONDISCRETIONARY ACT OR DUTY THAT IS REQUIRED BY THIS
30 ARTICLE OR TITLE 1, SUBTITLE 3, TITLE 5, SUBTITLE 16, OR TITLE 8,
31 SUBTITLE 18 OF THE NATURAL RESOURCES ARTICLE.

1 **(B) (1) (I) THIS PARAGRAPH APPLIES TO AN ACTION BROUGHT**
2 **UNDER SUBSECTION (A)(1) OF THIS SECTION.**

3 **(II) SUBJECT TO SUBPARAGRAPHS (IV) AND (V) OF THIS**
4 **PARAGRAPH, AN ACTION MAY BE BROUGHT AT LEAST 60 DAYS AFTER THE**
5 **PLAINTIFF HAS GIVEN NOTICE OF THE ALLEGED VIOLATION.**

6 **(III) NOTICE UNDER THIS SUBSECTION SHALL BE:**

7 1. **A. BY CERTIFIED MAIL; OR**

8 **B. PERSONAL SERVICE; AND**

9 2. **PROVIDED TO:**

10 **A. THE APPROPRIATE SECRETARY;**

11 **B. THE ATTORNEY GENERAL;**

12 **C. THE LOCAL JURISDICTION IN WHICH THE**
13 **ALLEGED VIOLATION HAS OCCURRED; AND**

14 **D. AN ALLEGED VIOLATOR OF THE STANDARD,**
15 **LIMITATION, ORDER, OR PERMIT.**

16 **(IV) AN ACTION MAY BE BROUGHT IMMEDIATELY AFTER**
17 **NOTICE IS PROVIDED IN ACCORDANCE WITH SUBPARAGRAPH (III) OF THIS**
18 **PARAGRAPH IF THE ALLEGED CONDITION, ACTIVITY, OR FAILURE PRESENTS AN**
19 **IMMINENT AND SIGNIFICANT RISK OF DAMAGE TO THE PUBLIC HEALTH,**
20 **NATURAL RESOURCES, OR ENVIRONMENT OF THE STATE, INCLUDING DAMAGE**
21 **TO LAND, WATER, AND AIR OF THE STATE.**

22 **(V) 1. AN ACTION MAY NOT BE BROUGHT UNDER**
23 **SUBSECTION (A) OF THIS SECTION IF A SECRETARY HAS COMMENCED AND IS**
24 **DILIGENTLY PROSECUTING A CIVIL OR CRIMINAL ACTION IN A COURT OF THE**
25 **STATE TO REQUIRE COMPLIANCE WITH THE STANDARD, LIMITATION, ORDER,**
26 **OR PERMIT ALLEGED TO BE IN VIOLATION.**

27 **2. NOTWITHSTANDING SUBSUBPARAGRAPH 1 OF**
28 **THIS SUBPARAGRAPH, A PERSON THAT HAS STANDING UNDER § 1-902 OF THIS**
29 **SUBTITLE MAY INTERVENE IN THE ACTION BROUGHT BY THE SECRETARY.**

30 **(VI) NOTICE UNDER THIS PARAGRAPH SHALL IDENTIFY:**

- 1
2 **VIOLATED;**
- 3
- 4
- 5
- 6
- 7
- 8 **NOTICE.**
1. **A STANDARD, LIMITATION, ORDER, OR PERMIT**
 2. **AN ACTIVITY CONSTITUTING THE VIOLATION;**
 3. **ALL PERSONS RESPONSIBLE FOR THE VIOLATION;**
 4. **THE LOCATION;**
 5. **THE DATES OF VIOLATIONS IF KNOWN; AND**
 6. **THE NAME AND ADDRESS OF THE PERSON GIVING**

9 **(2) (I) THIS PARAGRAPH APPLIES TO AN ACTION BROUGHT**
10 **UNDER SUBSECTION (A)(2) OF THIS SECTION.**

11 **(II) NOTICE UNDER THIS PARAGRAPH SHALL:**

12 1. **BE PROVIDED IN ACCORDANCE WITH PARAGRAPH**
13 **(1)(I), (II), (III), AND (IV) OF THIS SUBSECTION; AND**

14 2. **PROVIDE INFORMATION REGARDING:**

15 **A. THE STATUTORY PROVISIONS CREATING THE**
16 **NONDISCRETIONARY DUTY TO ACT, AND ACTION TAKEN OR NOT TAKEN, WITH**
17 **REASONABLE SPECIFICITY;**

18 **B. THE AGENCY, NAME, AND TITLE OF ANY OFFICER**
19 **ALLEGEDLY FAILING TO PERFORM AN ACT OF DUTY;**

20 **C. THE NAME AND ADDRESS OF THE PERSON GIVING**
21 **NOTICE; AND**

22 **D. THE NAME, ADDRESS, AND TELEPHONE NUMBER**
23 **OF THE LEGAL COUNSEL REPRESENTING THE PERSON GIVING NOTICE.**

24 **(C) AN ACTION BROUGHT IN ACCORDANCE WITH THIS SECTION SHALL**
25 **BE BROUGHT IN THE CIRCUIT COURT OF THE COUNTY WHERE THE ALLEGED**
26 **CONDITION, ACTIVITY, OR FAILURE IS OCCURRING, HAS OCCURRED, OR IS**
27 **LIKELY TO OCCUR.**

28 **(D) A COURT MAY:**

1 (1) **ORDER THE ENFORCEMENT OF A STANDARD, LIMITATION,**
2 **ORDER, OR PERMIT CHALLENGED UNDER THIS SECTION;**

3 (2) **GRANT:**

4 (1) **TEMPORARY OR PERMANENT EQUITABLE RELIEF; OR**

5 (II) **ANY OTHER RELIEF PROVIDED UNDER A STATUTE**
6 **CHALLENGED UNDER THIS SECTION;**

7 (3) **IMPOSE CONDITIONS ON A DEFENDANT TO REQUIRE THE**
8 **PROTECTION OF LAND, AIR, WATER, AND OTHER NATURAL RESOURCES OR**
9 **PUBLIC HEALTH FROM POLLUTION, IMPAIRMENT, OR DESTRUCTION; AND**

10 (4) **ORDER A SECRETARY OR ANY OTHER OFFICER OR AGENCY OF**
11 **THE STATE, LOCAL GOVERNMENT, OR POLITICAL SUBDIVISION TO PERFORM AN**
12 **ACT OR DUTY CHALLENGED UNDER THIS SECTION.**

13 (E) (1) **IN THIS SUBSECTION, “COSTS OF LITIGATION” INCLUDES**
14 **REASONABLE ATTORNEY’S FEES, COURT COSTS, AND EXPERT WITNESS FEES.**

15 (2) **IN AN ACTION UNDER THIS SECTION, THE COURT MAY AWARD**
16 **TO THE PREVAILING PARTY THE COSTS OF LITIGATION.**

17 (3) **IF A PARTY TO AN ACTION UNDER THIS SECTION ACTS IN BAD**
18 **FAITH OR WITHOUT SUBSTANTIAL JUSTIFICATION IN MAINTAINING OR**
19 **DEFENDING THE ACTION, THE COURT MAY AWARD TO THE ADVERSE PARTY THE**
20 **COSTS OF LITIGATION.**

21 (F) (1) **A COURT MAY IMPOSE A CIVIL PENALTY AUTHORIZED IN**
22 **ACCORDANCE WITH THE STATUTE UNDER WHICH AN ACTION IS BROUGHT**
23 **UNDER THIS SECTION.**

24 (2) **SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, A CIVIL**
25 **PENALTY COLLECTED UNDER THIS SUBSECTION SHALL BE DEPOSITED IN A**
26 **MANNER SPECIFIED BY THE STATUTE.**

27 (3) **IF THE ENFORCEMENT OF A STATUTORY DUTY HAS BEEN**
28 **DELEGATED TO A LOCAL GOVERNMENT, UP TO 10% OF A CIVIL PENALTY**
29 **COLLECTED UNDER THIS SUBSECTION MAY BE AWARDED TO THE LOCAL**
30 **GOVERNMENT.**

31 **1-907.**

1 SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this
2 Act or the application thereof to any person or circumstance is held invalid for any
3 reason in a court of competent jurisdiction, the invalidity does not affect other
4 provisions or any other application of this Act which can be given effect without the
5 invalid provision or application, and for this purpose the provisions of this Act are
6 declared severable.

7 SECTION 3. AND BE IT FURTHER ENACTED, That it is the intent of the
8 General Assembly that this Act:

9 (a) Provide certain remedies to abate the pollution, destruction, or
10 substantial or unreasonable impairment to the public health, air, water, land, or any
11 other natural resource of the State;

12 (b) May not abridge or alter any right of action or remedies which exist
13 under law; and

14 (c) May not be construed as stopping or limiting the State or any person in
15 the exercise of the right to:

16 (1) Protect the natural resources of the State;

17 (2) Suppress nuisances; or

18 (3) Abate pollution.

19 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 October 1, 2009.