

HOUSE BILL 186

M3

EMERGENCY BILL

2lr0065

By: **Chair, Environmental Matters Committee (By Request – Departmental – Environment)**

Introduced and read first time: January 25, 2012

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Department of the Environment – Permit Proceedings – Judicial Review**

3 FOR the purpose of clarifying the right of parties to appeal to the Court of Special
4 Appeals a decision by a circuit court regarding certain final permit
5 determinations by the Department of the Environment; providing for the
6 application of this Act; making this Act an emergency measure; and generally
7 relating to judicial review of certain final permit determinations by the
8 Department of the Environment.

9 BY repealing and reenacting, with amendments,
10 Article – Environment
11 Section 1–601 and 5–204(i)
12 Annotated Code of Maryland
13 (2007 Replacement Volume and 2011 Supplement)

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

16 **Article – Environment**

17 1–601.

18 (a) Permits issued by the Department under the following sections shall be
19 issued in accordance with this subtitle:

20 (1) Air quality control permits to construct subject to § 2–404 of this
21 article;

22 (2) Permits to install, materially alter or materially extend landfill
23 systems, incinerators for public use or rubble landfills subject to § 9–209 of this article;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (3) Permits to discharge pollutants to waters of the State issued
2 pursuant to § 9-323 of this article;

3 (4) Permits to install, materially alter or materially extend a structure
4 used for storage or distribution of any type of sewage sludge issued, renewed, or
5 amended pursuant to § 9-234.1 or § 9-238 of this article;

6 (5) Permits to own, operate, establish or maintain a controlled
7 hazardous substance facility issued pursuant to § 7-232 of this article;

8 (6) Permits to own, operate, or maintain a hazardous material facility
9 issued pursuant to § 7-103 of this article; and

10 (7) Permits to own, operate, establish or maintain a low-level nuclear
11 waste facility issued pursuant to § 7-233 of this article.

12 (b) For permits listed under subsection (a) of this section, a contested case
13 hearing may not occur.

14 (c) A final determination by the Department on the issuance, denial,
15 renewal, or revision of any permit listed under subsection (a) of this section is subject
16 to judicial review at the request of any person that:

17 (1) Meets the threshold standing requirements under federal law; and

18 (2) (i) Is the applicant; or

19 (ii) Participated in a public participation process through the
20 submission of written or oral comments, unless an opportunity for public participation
21 was not provided.

22 (d) (1) Judicial review shall be on the administrative record before the
23 Department and limited to objections raised during the public comment period, unless
24 the petitioner demonstrates that:

25 (i) The objections were not reasonably ascertainable during the
26 comment period; or

27 (ii) Grounds for the objections arose after the comment period.

28 (2) The court shall remand the matter to the Department for
29 consideration of objections under paragraph (1) of this subsection.

30 (e) **(1)** Unless otherwise required by statute, a petition for judicial review
31 by a person that meets the requirements of subsection (c) of this section shall be filed

1 with the circuit court for the county where the application for the permit states that
2 the proposed activity will occur.

3 **(2) THE DECISION OF THE CIRCUIT COURT MAY BE APPEALED TO**
4 **THE COURT OF SPECIAL APPEALS.**

5 (f) (1) When this article requires more than one public informational
6 meeting or public hearing, the Department may consolidate some or all of the
7 meetings or hearings for the proposed facility with similar meetings or hearings.

8 (2) The Department shall hold public informational meetings and
9 public hearings at a location in the political subdivision and in close proximity to the
10 location where the individual permit applies.

11 5–204.

12 (i) (1) Unless otherwise required by statute, a petition for judicial review
13 by a person who meets the requirements of subsection (f) of this section shall be filed
14 with the circuit court for the county where the application for the permit states that
15 the proposed activity will occur.

16 (2) [A petition for judicial] **JUDICIAL** review [filed] under this section
17 shall be [filed] **CONDUCTED** in accordance with Title 1, Subtitle 6 of this article.

18 **SECTION 2. AND BE IT FURTHER ENACTED,** That this Act shall be
19 construed to apply retroactively and shall be applied to and interpreted to affect all
20 appeals of final permit decisions subject to Title 1, Subtitle 6 of the Environment
21 Article that are pending in a circuit court on the effective date of this Act.

22 **SECTION 3. AND BE IT FURTHER ENACTED,** That this Act is an emergency
23 measure, is necessary for the immediate preservation of the public health or safety,
24 has been passed by a yea and nay vote supported by three–fifths of all the members
25 elected to each of the two Houses of the General Assembly, and shall take effect from
26 the date it is enacted.