

Chapter 358

(House Bill 186)

AN ACT concerning

Department of the Environment – Permit Proceedings – Judicial Review

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

BY repealing and reenacting, with amendments,

Article – Environment

Section 1–601 and 5–204(i)

Annotated Code of Maryland

(2007 Replacement Volume and 2011 Supplement)

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

Article – Environment

1–601.

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

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

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

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

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

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

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

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

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

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

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

(2) (i) Is the applicant; or

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

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

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

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

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

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

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

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

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

5-204.

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

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

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

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

Approved by the Governor, May 2, 2012.