

Chapter 93

(Senate Bill 171)

AN ACT concerning

Environment – Public Participation Modernization Act

FOR the purpose of authorizing the Department of the Environment to hold certain public meetings and hearings regarding certain licensing, permitting, and regulatory responsibilities using teleconference or Internet-based conferencing technology under certain circumstances; ~~requiring applicants for certain licenses or permits to bear the cost of certain public meetings and hearings held using teleconference or Internet-based conferencing technology;~~ repealing a requirement that notices regarding applications for certain air quality permits be sent by certified mail; requiring an applicant for certain permits to comply with specified provisions of law; requiring that certain hearings regarding sewage sludge permits be held in accordance with provisions of law regarding public participation rather than with the Administrative Procedure Act; and generally relating to public participation in the licensing, permitting, and regulations processes of the Department of the Environment.

BY repealing and reenacting, without amendments,
Article – Environment
Section 1–601(a), 1–603(c)(1), 1–604(a)(4)(i), and 5–204(a)
Annotated Code of Maryland
(2013 Replacement Volume and 2021 Supplement)

BY repealing and reenacting, with amendments,
Article – Environment
Section 1–601(f), 2–303, 2–404, 5–204(c), and 7–239
Annotated Code of Maryland
(2013 Replacement Volume and 2021 Supplement)

BY repealing and reenacting, with amendments,
Article – Environment
Section 9–204.2, 9–234, 9–234.1, 9–324, and 16–307(a)(5)
Annotated Code of Maryland
(2014 Replacement Volume and 2021 Supplement)

BY repealing and reenacting, without amendments,
Article – Environment
Section 16–307(a)(1)
Annotated Code of Maryland
(2014 Replacement Volume and 2021 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.

(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) **(I) WHEN THIS SUBTITLE REQUIRES THE DEPARTMENT TO HOLD A PUBLIC INFORMATIONAL MEETING OR PUBLIC HEARING, THE DEPARTMENT SHALL HOLD THE MEETING OR HEARING IN ACCORDANCE WITH THE REQUIREMENTS OF THIS PARAGRAPH.**

(II) THE DEPARTMENT MAY HOLD A PUBLIC INFORMATIONAL MEETING OR PUBLIC HEARING REQUIRED UNDER THIS SUBTITLE USING TELECONFERENCE OR INTERNET–BASED CONFERENCING TECHNOLOGY UNLESS:

1. AN APPLICABLE PROVISION OF FEDERAL STATUTE OR REGULATION REQUIRES THE MEETING OR HEARING TO BE HELD IN PERSON; OR

2. SUBJECT TO SUBPARAGRAPH (IV) OF THIS PARAGRAPH, ANY PERSON MAKES A TIMELY REQUEST WITHIN THE TIME PERIODS SPECIFIED IN §§ 1-603(C)(1) AND 1-604(A)(4)(I) OF THIS SUBTITLE THAT THE MEETING OR HEARING BE HELD IN PERSON.

(III) [The Department shall hold public informational meetings and public hearings] IF THE DEPARTMENT HOLDS AN IN-PERSON PUBLIC INFORMATIONAL MEETING OR PUBLIC HEARING, THE DEPARTMENT SHALL HOLD THE MEETING OR HEARING at a location in the political subdivision and in close proximity to the location where the individual permit applies.

(IV) TO PROTECT PUBLIC HEALTH AND SAFETY, THE DEPARTMENT IS NOT REQUIRED TO HOLD AN IN-PERSON PUBLIC INFORMATIONAL MEETING OR PUBLIC HEARING SPECIFIED UNDER SUBPARAGRAPH (II)2 OF THIS PARAGRAPH IF AN EMERGENCY DECLARATION IS ISSUED BY AN EXECUTIVE AUTHORITY OF:

1. THE FEDERAL OR STATE GOVERNMENT; OR

2. THE LOCAL GOVERNMENT WITH JURISDICTION OVER A COUNTY OR MUNICIPALITY WHERE THE IN-PERSON MEETING OR HEARING WOULD OTHERWISE BE HELD.

~~**(V) THE APPLICANT SHALL BEAR THE COST OF A PUBLIC INFORMATIONAL MEETING OR PUBLIC HEARING HELD USING TELECONFERENCE OR INTERNET-BASED CONFERENCING TECHNOLOGY IN ACCORDANCE WITH SUBPARAGRAPH (II) OF THIS PARAGRAPH.**~~

1-603.

(c) (1) Upon written request made within 10 working days after publication of a notice of application, or in its own discretion, the Department shall provide an opportunity for an informational meeting with respect to the application.

1-604.

(a) (4) (i) The Department shall schedule a public hearing on the tentative determination when a written request for a public hearing is made within 20 days of publication of a notice of the tentative determination.

2-303.

(a) The Department may not adopt any rule or regulation under this title unless the requirements of this section and the Administrative Procedure Act are met.

(b) **(1)** Before adopting any rule or regulation under this title, the Department shall announce and hold a public hearing on the subject.

(2) A PUBLIC HEARING REQUIRED UNDER THIS SUBTITLE MAY BE HELD USING TELECONFERENCE OR INTERNET-BASED CONFERENCING TECHNOLOGY.

(c) **(1)** [Until October 1, 2014, at least 30 days before the public hearing, the Department shall publish notice of the hearing in a newspaper of general circulation in the area concerned.

(2) The notice required under paragraph (1) of this subsection shall state:

(i) The date, time, and place of the hearing;

(ii) The purpose of the hearing;

(iii) That, beginning on October 1, 2014, all future notices required under this title will be posted on the Department's Web site; and

(iv) A phone number or electronic mail address at the Department that a person can contact to arrange for the receipt of future public notices required under this title by first-class mail or electronic mail.

(3) Beginning on October 1, 2014, at] **AT** least 30 days before the public hearing, the Department shall publish notice of the hearing in a newspaper of general circulation in the area concerned or on the Department's [Web site] **WEBSITE**.

[(4)] (2) The notice required under paragraph **[(3)] (1)** of this subsection shall state:

(i) The date, time, and place of the hearing; and

(ii) The purpose of the hearing.

(d) [Beginning on October 1, 2014, the] **THE** Department shall publish annually a notice in a newspaper of general circulation to inform the public of:

(1) The types of public notices required under this title that are available on the Department's [Web site] **WEBSITE**; and

(2) A phone number or electronic mail address at the Department that a person can contact to arrange for the receipt of future public notices required under this title by first-class mail or electronic mail.

(e) After the public hearing, the Department may adopt the rule or regulation with or without modification.

2-404.

(a) This section applies to the following activities:

(1) Construction of a new source;

(2) Replacement of components of an existing permitted source, if the fixed capital cost of the replacement components exceeds one-half of the fixed capital cost that would be required to construct a new source comparable in process to the existing source; and

(3) Modification of an existing permitted source by making a physical or operational change to the source that will result in a significant net increase in emissions of any pollutant from that source.

(b) (1) Before accepting an application for a permit subject to subsection (c) of this section, the Department shall require the applicant to submit documentation:

(i) That demonstrates that the proposal has been approved by the local jurisdiction for all zoning and land use requirements; or

(ii) That the source meets all applicable zoning and land use requirements.

(2) Paragraph (1) of this subsection does not apply to any application for a permit to construct at an existing source unless the existing source is a nonconforming use.

(c) The Department shall comply with the provisions in subsection (d) of this section before issuing a permit for the activities listed in subsection (a) of this section at:

(1) Any source which is required to obtain a permit to operate under regulations adopted under this subtitle;

(2) Any source which is subject to federal standards under 40 C.F.R. Part 61 (National Emission Standards for Hazardous Air Pollutants) or 40 C.F.R. 52.21 (Prevention of Significant Deterioration); or

(3) Any source that will, after control, discharge 25 tons or more per year of a pollutant regulated under this title in the areas of Baltimore City designated by the United States Post Office as zip code numbers 21225, 21226, and 21230.

(d) (1) On receipt of an application for a permit subject to subsection (c) of this section, the Department shall give notice immediately or require the applicant to give notice immediately of the application [by certified mail] to:

(i) The governing body of each county or municipal corporation in which any portion of the source is located or is proposed to be located;

(ii) The governing body of each county or municipal corporation within one mile of the property line of the source or the proposed location of the source;

(iii) Each member of the General Assembly representing any part of a county in which any portion of the source is located or proposed to be located; and

(iv) Each member of the General Assembly representing any part of each county within one mile of the property line of the source or the proposed location of the source.

(2) In addition to the requirements under paragraph (1) of this subsection, before issuing a permit subject to subsection (c) of this section, the Department shall:

(i) Comply with the provisions of Title 1, Subtitle 6 of this article; and

(ii) Conduct any public hearing required by Title 1, Subtitle 6 of this article [in the county in which the proposed source is located].

(3) In addition to the requirements under paragraphs (1) and (2) of this subsection, before issuing a permit to construct a source described in subsection (c)(3) of this section, the Department shall require at the expense of the applicant the preparation of an ambient air quality impact analysis regarding the proposed construction.

(e) Before issuing a permit for the activities listed in subsection (a) of this section at any source which is subject to federal standards under 40 C.F.R. Part 60 (New Source Performance Standards), the Department shall:

(1) Comply with the provisions of subsection (d) of this section; or

(2) (i) Electronically post a notice of an application for the permit on the Department's [Web site] WEBSITE in accordance with § 1-602(b)(1) of this article;

(ii) Give notice to the chief executive of any county or municipal corporation in which any portion of the source is located or is proposed to be located; and

(iii) Receive comments from the public on the permit application.

(f) The provisions of this section do not apply to any permit to construct control equipment on an existing source or to any permit to operate.

5-204.

(a) (1) It is the intent of the General Assembly to establish consolidated procedures and notice and hearing requirements for Subtitles 5 and 9 of this title and Titles 14, 15, and 16 of this article in order to ensure efficient review and consistent decision making.

(2) Notwithstanding any provision of the State Government Article, public notice on pending applications provided in accordance with the provisions of this section shall be the only notice required by law.

(c) (1) The Department shall hold a public informational hearing if it receives a timely written request in accordance with the [following] provisions[:] **OF THIS SUBSECTION.**

[(1)] (2) The request shall be received prior to the close of the public comment period.

[(2)] (3) A public informational hearing shall be held within 45 calendar days of the close of the public comment period.

[(3)] (4) The Department shall specify the date, time, and location of the public **INFORMATIONAL** hearing.

(5) THE PUBLIC INFORMATIONAL HEARING MAY BE HELD USING TELECONFERENCE OR INTERNET-BASED CONFERENCING TECHNOLOGY.

[(4)] (6) The Department shall mail notice of the date, time, and location of any public informational hearing on an application to those persons on the interested persons list no later than 14 calendar days prior to the hearing.

[(5)] (7) The Department may extend the official record of a public informational hearing.

~~**(8) THE APPLICANT SHALL BEAR THE COST OF A PUBLIC INFORMATIONAL HEARING HELD USING TELECONFERENCE OR INTERNET-BASED CONFERENCING TECHNOLOGY IN ACCORDANCE WITH PARAGRAPH (5) OF THIS SUBSECTION.**~~

7-239.

(a) Before the Department issues a controlled hazardous substance facility permit, the Department **AND THE APPLICANT** shall comply with Title 1, Subtitle 6 of this article.

(b) Before the Department issues a low-level nuclear waste facility permit[, the]:

(1) THE Department AND THE APPLICANT shall[:

(1) Comply] COMPLY with Title 1, Subtitle 6 of this article; and

(2) [Conduct] THE DEPARTMENT SHALL CONDUCT any public hearing required by § 1-604 of this article:

(I) USING TELECONFERENCE OR INTERNET-BASED CONFERENCING TECHNOLOGY; OR

(II) IN PERSON in the county where the proposed facility is to be located.

9-204.2.

(a) In addition to the requirements of § 9-204 of this subtitle and Title 1, Subtitle 6 of this article, an applicant for a permit to install, materially alter, or materially extend a landfill system shall give notice of the application by certified mail to:

(1) The owners of all real property adjoining the site where the proposed project is located;

(2) The chairman of the legislative body and any elected executive of the county where the proposed project site is located;

(3) The elected executive of any municipal corporation where the proposed project site is located; and

(4) Any other county within 1 mile of where the proposed project site is located.

(b) Any informational meeting required by § 1-603 of this article shall be held [in the county where the proposed facility is to be located] **IN ACCORDANCE WITH TITLE 1, SUBTITLE 6 OF THIS ARTICLE.**

9-234.

(a) When the Department receives an application for a permit to utilize sewage sludge at a site, the Department immediately shall mail a copy of the permit application:

(1) To the legislative body and any elected executive of a county and to the elected executive of any municipal corporation where the sewage sludge utilization site is to be located; and

(2) To the legislative body and any elected executive of any other county within 1 mile of the sewage sludge utilization site.

(b) For a permit to apply sewage sludge on marginal land or to construct a permanent facility that is designed primarily to utilize sewage sludge, the Department shall:

(1) Publish notice of the application in a local newspaper having a substantial circulation in the county where the sewage sludge is to be applied or the facility is to be constructed;

(2) Mail a copy of the notice to:

(i) The local health official;

(ii) The chairman of the legislative body and any elected executive of the county where the sewage sludge is to be applied or the facility is to be constructed;

(iii) The elected executive of any municipal corporation where the sewage sludge is to be applied or the facility is to be constructed; and

(iv) Any other county within 1 mile of where the sewage sludge is to be applied or the facility is to be constructed.

(c) (1) Except as otherwise provided in § 9–234.1 of this subtitle, within 15 days after receiving a copy of the permit application, the executive or the legislative body of the county, or the executive or the legislative body of the municipal corporation, where the sewage sludge is to be applied or the facility is to be constructed may request that the Department hold a public hearing.

(2) If the Department receives a request under paragraph (1) of this subsection, the Department shall hold a public hearing:

(I) USING TELECONFERENCE OR INTERNET–BASED CONFERENCING TECHNOLOGY; OR

(II) IN PERSON in the affected subdivision [in accordance with the Administrative Procedure Act].

(3) If the executives or legislative bodies of more than [1] ONE county or municipal corporation request a hearing under this subsection, the Department may hold a consolidated hearing:

(I) USING TELECONFERENCE OR INTERNET-BASED CONFERENCING TECHNOLOGY; OR

(II) IN PERSON in [1] ONE county.

~~(4) AN APPLICANT SHALL BEAR THE COST OF HOLDING A PUBLIC HEARING USING TELECONFERENCE OR INTERNET-BASED CONFERENCING TECHNOLOGY IN ACCORDANCE WITH PARAGRAPH (2) OR (3) OF THIS SUBSECTION.~~

(d) For a permit to apply sewage sludge on land other than marginal land, the Department shall mail a copy of the permit application to:

(1) The local health official;

(2) The chairman of the legislative body and any elected executive of the county where the sewage sludge is to be applied; and

(3) The elected executive of any municipal corporation where the sewage sludge is to be applied.

(e) (1) Within 10 days after receiving a copy of the permit application, the executive or the legislative body of the county, or the executive or the legislative body of the municipal corporation, where the sewage sludge is to be applied may request that the Department conduct a public information meeting.

(2) If the Department receives a request under paragraph (1) of this subsection, the Department:

(i) Shall conduct a public information meeting:

1. USING TELECONFERENCE OR INTERNET-BASED CONFERENCING TECHNOLOGY; OR

2. IN PERSON in the affected subdivision;

(ii) May consolidate the public information meeting with [1] ONE or more public information meetings for other applications in the same county; and

(iii) Shall notify the applicant for a permit and give the applicant the opportunity to present information at the public information meeting.

(3) If the executives or legislative bodies of more than [1] ONE county or municipal corporation request a public information meeting under this subsection, the Department may hold a consolidated public information meeting:

(I) USING TELECONFERENCE OR INTERNET-BASED CONFERENCING TECHNOLOGY; OR

(II) IN PERSON in [1] ONE county.

~~(4) AN APPLICANT SHALL BEAR THE COST OF HOLDING A PUBLIC INFORMATION MEETING USING TELECONFERENCE OR INTERNET BASED CONFERENCING TECHNOLOGY IN ACCORDANCE WITH PARAGRAPH (2)(I) OR (3) OF THIS SUBSECTION.~~

(f) TO PROTECT PUBLIC HEALTH AND SAFETY, THE DEPARTMENT IS NOT REQUIRED TO HOLD AN IN-PERSON PUBLIC HEARING OR PUBLIC INFORMATION MEETING SPECIFIED UNDER SUBSECTIONS (C) AND (E) OF THIS SECTION IF AN EMERGENCY DECLARATION IS ISSUED BY AN EXECUTIVE AUTHORITY OF:

(1) THE FEDERAL OR STATE GOVERNMENT; OR

(2) THE LOCAL GOVERNMENT WITH JURISDICTION OVER A COUNTY OR MUNICIPALITY WHERE THE IN-PERSON MEETING OR HEARING WOULD OTHERWISE BE HELD.

(G) The Department shall provide each county and municipal corporation that receives a copy of any application under this section with an opportunity to consult with the Department about the decision to issue, deny, or place restrictions on a sewage sludge utilization permit.

9-234.1.

(a) This section does not apply to the storage or distribution of sewage sludge at a sewage treatment plant.

(b) Before the Secretary issues, amends, or renews a permit to an applicant or permit holder under § 9-232 or § 9-238 of this subtitle to install, materially alter, or materially extend a structure used for storage or distribution of any type of sewage sludge, the Department shall hold a public hearing on the application, amendment, or renewal.

(c) The Department shall hold a public hearing [in the affected subdivision] in accordance with [the Administrative Procedure Act] TITLE 1, SUBTITLE 6 OF THIS ARTICLE.

(d) **(1)** If more than **[1] ONE** county or municipal corporation will be affected by the granting of the sludge storage permit application, the Department may hold a consolidated hearing **[in any affected subdivision] IN ONE COUNTY OR MUNICIPAL CORPORATION.**

(2) IF THE DEPARTMENT HOLDS A CONSOLIDATED HEARING UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE CONSOLIDATED HEARING SHALL BE HELD IN ACCORDANCE WITH TITLE 1, SUBTITLE 6 OF THIS ARTICLE.

9–324.

(a) Subject to the provisions of this section, the Department may issue a discharge permit if the Department finds that the discharge meets:

(1) All applicable State and federal water quality standards and effluent limitations; and

(2) All other requirements of this subtitle.

(b) Before issuing a discharge permit, the Department **AND THE APPLICANT** shall comply with the provisions of Title 1, Subtitle 6 of this article.

(c) The **[information] INFORMATIONAL** meeting required by Title 1, Subtitle 6 of this article shall be held in **[the geographical area that will be most directly affected if the discharge permit is issued] ACCORDANCE WITH TITLE 1, SUBTITLE 6 OF THIS ARTICLE.**

(d) The Department shall give public notice of each application for a discharge permit as required by Title 1, Subtitle 6 of this article, and by making available to the public appropriate documents, permit applications, supporting material, plans, and other relevant information.

16–307.

(a) (1) Any person proposing to conduct on any wetland an activity not authorized by the regulations adopted under the provisions of § 16–302 of this subtitle shall apply for a permit with the Secretary, on the form the Secretary prescribes.

(5) (i) No later than 30 days after receipt of the application, the Secretary shall issue public notice of the opportunity to submit written comments or to request a hearing.

(II) A hearing shall be held if requested.

(III) A HEARING REQUIRED UNDER THIS SECTION MAY BE HELD USING TELECONFERENCE OR INTERNET-BASED CONFERENCING TECHNOLOGY.

~~**(IV) THE APPLICANT SHALL BEAR THE COST OF A HEARING HELD USING TELECONFERENCE OR INTERNET-BASED CONFERENCING TECHNOLOGY IN ACCORDANCE WITH SUBPARAGRAPH (III) OF THIS PARAGRAPH.**~~

[(ii)] ~~(iv)~~ (IV) If an electric company, as defined in § 1-101 of the Public Utilities Article, applies to the Public Service Commission for a certificate of public convenience associated with power plant construction which involves private wetlands, the hearing and permit procedure shall be in accordance with § 3-306 of the Natural Resources Article.

[(iii)] ~~(vi)~~ (V) At a requested hearing any person may appear and give testimony.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2022.

Approved by the Governor, April 12, 2022.