A BILL ENTITLED

AN ACT concerning

Healthy Air Act

FOR the purpose of establishing certain limits on the emissions of oxides of nitrogen, sulfur dioxide, mercury, and carbon dioxide from certain facilities by certain dates; requiring the Department of the Environment to set certain emissions budgets; requiring the Governor to include the State in the Regional Greenhouse Gas Initiative or, the alternative, requiring the Department to adopt certain regulations to reduce carbon dioxide emissions from affected facilities; providing for the application of this Act; authorizing affected facilities to determine the best method of compliance with requirements of this Act; requiring the Department to treat certain allowances allocated by the U.S. Environmental Protection Agency to the State in a certain manner; requiring certain facilities to submit, to the Department, the Department of Natural Resources, and the Public Service Commission, a certain compliance report by a certain date; requiring the Department to review certain information received in accordance with this Act; requiring the Department to adopt certain regulations; providing for criminal and civil penalties for a violation of this Act; establishing a Maryland Carbon Reduction Fund in the Maryland Energy Administration; providing for the operation and maintenance of the Fund; providing that the Fund consists of certain fines and penalties, certain proceeds, and certain other money; defining certain terms; and generally relating to the emissions of four pollutants from power plants.

BY adding to

Article - Environment
Section 2-1001 through 2-1005, inclusive, to be under the new subtitle "Subtitle 10. Healthy Air Act"
Annotated Code of Maryland
(1996 Replacement Volume and 2005 Supplement)

BY adding to
Article - State Government
Section 9-2009
Annotated Code of Maryland
(2004 Replacement Volume and 2005 Supplement)

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

Article - Environment

SUBTITLE 10. HEALTHY AIR ACT.

2-1001.

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

(B) (1) "AFFECTED FACILITY" MEANS AN ELECTRICITY GENERATING UNIT IN THE STATE THAT INCLUDES A FOSSIL FUEL FIRED BOILER OR INDIRECT HEAT EXCHANGER THAT WAS EXEMPTED FROM THE PREVENTION OF SIGNIFICANT DETERIORATION REVIEW UNDER TITLE 1 OF THE 1977 FEDERAL CLEAN AIR ACT.

(2) "AFFECTED FACILITY" INCLUDES:

(I) H.A. WAGNER, UNITS 2 AND 3;

(II) R.P. SMITH, UNITS 3 AND 4;

(III) MORGANTOWN GENERATING STATION, UNITS 1 AND 2;

(IV) DICKERSON, UNITS 1, 2, AND 3;

(V) C.P. CRANE, UNITS 1 AND 2;

(VI) CHALK POINT GENERATING STATION, UNITS 1 AND 2; AND

(VII) BRANDON SHORES, UNITS 1 AND 2.

(3) "AFFECTED FACILITY" DOES NOT INCLUDE ANY ELECTRICITY GENERATING UNIT:
(I) THAT OPERATES IN COMBINATION WITH EQUIPMENT USED TO RECOVER USEFUL THERMAL ENERGY FOR INDUSTRIAL, COMMERCIAL, HEATING, OR COOLING PURPOSES THROUGH SEQUENTIAL USE OF ENERGY; OR

(II) THAT SUPPLIES IN ANY CALENDAR YEAR LESS THAN ONE-HALF OF THE ELECTRICITY GENERATED BY SUCH UNIT TO ANY UTILITY POWER DISTRIBUTION SYSTEM FOR SALE.

(C) "INLET MERCURY" MEANS THE AVERAGE CONCENTRATION OF MERCURY IN FLUE GAS AT THE INLET OF THE EMISSION CONTROL DEVICE IMMEDIATELY DOWNSTREAM OF THE BOILER OF AN ELECTRICITY GENERATING UNIT, AS DETERMINED BY METHODS PRESCRIBED BY THE DEPARTMENT.

(D) "LOAD-SERVING ENTITY" MEANS AN ELECTRIC COMPANY, MUNICIPAL CORPORATION, OR COOPERATIVE SERVING ELECTRICITY CUSTOMERS IN MARYLAND.

(E) "PJM REGION" HAS THE MEANING STATED UNDER § 7-701 OF THE PUBLIC UTILITY COMPANIES ARTICLE.

2-1002.

(A) ON OR AFTER JANUARY 1, 2010, THERE IS AN ANNUAL CEILING ON THE TOTAL AMOUNT OF OXIDES OF NITROGEN AND SULFUR DIOXIDE EMISSIONS FROM AFFECTED FACILITIES AS FOLLOWS:

(1) 21,303 TONS OF OXIDES OF NITROGEN; AND

(2) 39,925 TONS OF SULFUR DIOXIDE.

(B) ON OR AFTER JANUARY 1, 2015, THE ANNUAL CEILING ON THE TOTAL AMOUNT OF OXIDES OF NITROGEN AND SULFUR DIOXIDE EMISSIONS FROM AFFECTED FACILITIES SHALL BE REDUCED TO:

(1) 13,339 TONS OF OXIDES OF NITROGEN; AND

(2) 24,645 TONS OF SULFUR DIOXIDE.

(C) THE DEPARTMENT SHALL SET EMISSIONS BUDGETS FOR EACH AFFECTED FACILITY TO IMPLEMENT THE EMISSIONS LIMITATIONS IN SUBSECTIONS (A) AND (B) OF THIS SECTION.

(D) ON OR AFTER JANUARY 1, 2010, A PERSON THAT OWNS, LEASES, OPERATES, OR CONTROLS AN AFFECTED FACILITY SHALL:

(1) ACHIEVE A MINIMUM 90% CAPTURE OF INLET MERCURY FOR EACH AFFECTED FACILITY, CALCULATED AS A ROLLING 12-MONTH AVERAGE; AND

(2) DEMONSTRATE COMPLIANCE WITH PARAGRAPH (1) OF THIS SUBSECTION THROUGH THE DIRECT MONITORING OF MERCURY EMISSIONS ON A CONTINUOUS BASIS, ACCORDING TO THE REQUIREMENTS OF 40 C.F.R. PART 60, 60.49A(P), 60.4170-60.4176, AND 40 C.F.R. PART 75, SUBPART I.
(E) NOT LATER THAN JUNE 30, 2007:

(1) THE GOVERNOR SHALL INCLUDE THE STATE AS A FULL PARTICIPANT IN THE REGIONAL GREENHOUSE GAS INITIATIVE AMONG MID- ATLANTIC AND NORTHEAST STATES; OR

(2) THE DEPARTMENT SHALL ADOPT REGULATIONS TO REQUIRE A 10% REDUCTION OF CARBON DIOXIDE EMISSIONS FROM AFFECTED FACILITIES BY 2018, THROUGH AN IN-STATE SYSTEM FOR TRADING AND TRACKING CARBON DIOXIDE EMISSIONS IN ACCORDANCE WITH SUBSECTION (F) OF THIS SECTION.

(F) AS PART OF THE SYSTEM REQUIRED UNDER SUBSECTION (E)(2) OF THIS SECTION, THE DEPARTMENT SHALL:

(1) CREATE A BASELINE EMISSION LEVEL BY ESTABLISHING ALLOWANCES FOR THE EMISSION OF CARBON DIOXIDE EQUIVALENT TO THE 2004 CARBON DIOXIDE EMISSIONS OF THE AFFECTED FACILITIES AS FOLLOWS:

(I) THE DEPARTMENT SHALL GRANT UP TO 75% OF THE ALLOWANCES TO THE OWNERS OF THE AFFECTED FACILITIES IN PROPORTION TO THEIR 2004 EMISSIONS;

(II) THE DEPARTMENT SHALL AUCTION AT LEAST 25% OF THE ALLOWANCES, WITH THE PROCEEDS DEPOSITED IN THE MARYLAND CARBON REDUCTION FUND ESTABLISHED UNDER § 9-2009 OF THE STATE GOVERNMENT ARTICLE;

(III) EFFECTIVE JANUARY 1, 2009, A PERSON THAT OWNS, LEASES, OPERATES, OR CONTROLS AN AFFECTED FACILITY MAY NOT EMIT MORE CARBON DIOXIDE THAN THE TOTAL ALLOWANCES HELD BY THE PERSON;

(IV) EFFECTIVE JANUARY 1, 2015, THE NUMBER OF TONS OF CARBON DIOXIDE REPRESENTED BY EACH ALLOWANCE SHALL BE REDUCED BY 2.5% PER YEAR, SUCH THAT EACH ALLOWANCE IN 2018 WILL REPRESENT 10% LESS THAN EACH ALLOWANCE IN 2014;

(V) FOR THE PURPOSES OF THIS SUBSECTION, CARBON DIOXIDE EMISSIONS SHALL BE CALCULATED USING FUEL USE DATA AS REPORTED ON FORM 906, SUBMITTED TO THE U.S. ENERGY INFORMATION ADMINISTRATION; AND

(VI) UP TO 3.3% OF THE EMISSIONS OF CARBON DIOXIDE OF AN AFFECTED FACILITY MAY BE OFFSET BY CREDITS OBTAINED FROM ANY SPONSOR OF AN EMISSIONS REDUCTION OR CARBON SEQUESTRATION PROJECT THAT IS FOUND BY THE SECRETARY TO MEET ALL APPLICABLE CRITERIA FOR SUCH PROJECTS IN ACCORDANCE WITH THE REGIONAL GREENHOUSE GAS INITIATIVE; AND

(2) ESTABLISH A SYSTEM FOR OFFSETTING THE CARBON DIOXIDE EMISSIONS OF STATEWIDE ELECTRICITY IMPORTS ABOVE THE AMOUNT OF ELECTRICITY IMPORTED IN 2004 AS FOLLOWS:
A load-serving entity in the State that contracts to purchase electric power generated in a state other than Maryland or states participating in the Regional Greenhouse Gas Initiative in order to replace electric power formerly purchased from an affected facility, shall offset the carbon dioxide emissions of that power; and

The amount of carbon dioxide emissions attributed to power generated in a state other than Maryland or a state participating in the Regional Greenhouse Gas Initiative shall be calculated according to the average carbon dioxide emissions of the electricity generated by the person selling the power in the region in which such power is generated.

The provisions of this section may not be construed to affect emissions requirements, standards, or limitations imposed on electricity generators by any other provision of law that would result in emissions reductions in addition to those required under this section.

A person that owns, leases, operates, or controls an affected facility that is subject to the requirements of this section may determine how best to achieve the collective emissions requirements under subsections (A), (B), and (E) of this section.

If the U.S. Environmental Protection Agency allocates emission allowances for mercury, sulfur dioxide, or oxides of nitrogen to the State, the allowances shall be treated as follows:

A mercury allowance may not be allocated to any person that owns, leases, operates, or controls an affected facility or other source of mercury emissions into the atmosphere or mercury discharges into the waters of the State.

The department shall hold all mercury allowances allocated by the U.S. Environmental Protection Agency to the State. At the end of each calendar year, the department shall instruct the U.S. Environmental Protection Agency to retire permanently the allowances.

The department shall ensure that any emission allowances for sulfur dioxide or oxides of nitrogen allocated by the department to any person that owns, leases, operates, or controls an affected facility may not be made available for resale or exchange.

Beginning December 1, 2007, and each year thereafter, a person who owns, leases, operates, or controls an affected facility shall
SUBMIT TO THE DEPARTMENT, THE DEPARTMENT OF NATURAL RESOURCES, AND THE PUBLIC SERVICE COMMISSION, A REPORT THAT INCLUDES:

(1) EMISSIONS PERFORMANCE RESULTS RELATED TO COMPLIANCE WITH THE EMISSIONS REQUIREMENTS UNDER § 2-1002 OF THIS SUBTITLE;

(2) THE NUMBER OF POUNDS OF OXIDES OF NITROGEN, SULFUR DIOXIDE, MERCURY, AND CARBON DIOXIDE EMITTED DURING THE PREVIOUS CALENDAR YEAR FROM THE AFFECTED FACILITY;

(3) A CURRENT COMPLIANCE PLAN; AND

(4) ANY OTHER INFORMATION REQUESTED BY THE DEPARTMENT.

THE DEPARTMENT SHALL REVIEW THE INFORMATION SUBMITTED UNDER THIS SECTION TO DETERMINE WHETHER THE ACTUAL AND PROPOSED MODIFICATIONS AND PERMIT AND CONSTRUCTION SCHEDULES ARE ADEQUATE TO ACHIEVE THE EMISSIONS REQUIREMENTS UNDER THIS SUBTITLE AND SHALL MAKE THESE DETERMINATIONS PUBLICLY AVAILABLE ON AN ANNUAL BASIS.

2-1004.

BY JUNE 30, 2007, THE DEPARTMENT SHALL ADOPT REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS SUBTITLE.

2-1005.

THE CRIMINAL PENALTY PROVISIONS OF THIS SECTION ARE IN ADDITION TO THE CIVIL PENALTY PROVISIONS PROVIDED UNDER § 2-610 OF THIS TITLE.

(1) A PERSON MAY NOT KNOWINGLY ACT OR FAIL TO ACT IN VIOLATION OF THE PROVISIONS OF THIS SUBTITLE OR THE REGULATIONS ADOPTED UNDER THIS SUBTITLE.

(2) A PERSON WHO VIOLATES PARAGRAPH (1) OF THIS SUBSECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:

(I) FOR A FIRST OFFENSE, A FINE NOT EXCEEDING $25,000 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH; OR

(II) FOR A VIOLATION COMMITTED AFTER A FIRST CONVICTION UNDER THIS SECTION, A FINE NOT EXCEEDING $50,000 OR IMPRISONMENT NOT EXCEEDING 2 YEARS OR BOTH.

(3) EACH DAY ON WHICH A VIOLATION OCCURS IS A SEPARATE VIOLATION UNDER THIS SUBSECTION.

(C) A CRIMINAL PROSECUTION FOR A VIOLATION BROUGHT UNDER THIS SECTION SHALL BE INSTITUTED WITHIN 3 YEARS AFTER THE VIOLATION WAS COMMITTED.
(A) THERE IS A MARYLAND CARBON REDUCTION FUND ADMINISTERED BY THE ADMINISTRATION.

(B) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

(C) THE TREASURER SHALL HOLD THE FUND SEPARATELY AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.

(D) THE FUND CONSISTS OF:

(1) PROCEEDS FROM THE SALE OF ALLOWANCES UNDER § 2-1002(E)(2) OF THE ENVIRONMENT ARTICLE;

(2) CRIMINAL FINES AND CIVIL PENALTIES IMPOSED UNDER TITLE 2, SUBTITLE 10 OF THE ENVIRONMENT ARTICLE;

(3) MONEY APPROPRIATED IN THE STATE BUDGET TO THE FUND; AND

(4) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED FOR THE BENEFIT OF THE FUND.

(E) THE FUND MAY BE USED ONLY:

(1) TO IMPLEMENT STANDARDS AND TO PROVIDE INCENTIVES TO CONSUMERS SO THAT ENERGY EFFICIENT PRODUCTS AND SERVICES THAT ARE NOT BROADLY AVAILABLE AND USED BY STATE CONSUMERS BECOME STANDARD PRODUCT OFFERINGS;

(2) TO CAPTURE OPPORTUNITIES OTHERWISE LOST FOR COST-EFFECTIVE ENERGY EFFICIENT DESIGNS, MATERIALS, AND EQUIPMENT WHEN HOMES AND BUILDINGS ARE BUILT, REMODELED, OR RENOVATED, AND WHEN EQUIPMENT IS REPLACED;

(3) TO REDUCE PEAK DEMAND FOR ELECTRICITY AND IMPROVE SERVICE RELIABILITY FOR ALL CUSTOMERS THROUGH ENERGY EFFICIENCY MEASURES THAT ARE ESPECIALLY EFFECTIVE AT REDUCING PEAK SYSTEM DEMANDS; AND

(4) TO ENSURE THAT LOW-INCOME CUSTOMERS CAN FULLY PARTICIPATE IN OPPORTUNITIES TO SAVE ELECTRICITY AND REDUCE THEIR ELECTRICITY COSTS.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2006.