

CHAPTER 650

(Senate Bill 1065)

AN ACT concerning

Standing – Miscellaneous Environmental Protection Proceedings and Judicial Review

FOR the purpose of repealing certain contested case hearing provisions related to permitting decisions by the Department of the Environment; authorizing judicial review of certain permitting and license decisions by the Department or the Board of Public Works at the request of certain persons who meet certain federal standing requirements and participate in a certain public participation process; establishing that under certain circumstances judicial review is available and a contested case hearing is prohibited; providing for the scope of judicial review; requiring a certain petition for judicial review to be filed with a certain circuit court; establishing procedures for filing a petition for judicial review; ~~altering~~ providing for certain temporary stay provisions; establishing the contents of a certain record; requiring a certain extension of certain public comment periods on a certain request; authorizing certain persons who meet certain federal standing requirements to participate in a certain proceeding and certain judicial actions regarding variances to certain Critical Area requirements; providing for the application of this Act; making the provisions of this Act severable; providing for a delayed effective date; making conforming changes; and generally relating to standing in certain environmental protection proceedings and certain judicial actions.

BY repealing and reenacting, without amendments,
Article – Environment
Section 1–101(b) and 16–202(a), (b), and (c)(1)
Annotated Code of Maryland
(2007 Replacement Volume and 2008 Supplement)

BY repealing and reenacting, with amendments,
Article – Environment
Section 1–601, 1–603(d)(1), 1–605, 5–204, 14–105(b), 14–508(b), 15–810(e),
~~15–813(e)~~, 16–204, ~~and~~ 16–307(d), and 16–309
Annotated Code of Maryland
(2007 Replacement Volume and 2008 Supplement)

BY repealing
Article – Environment
Section 1–606 and 16–308
Annotated Code of Maryland

(2007 Replacement Volume and 2008 Supplement)

BY adding to

Article – Environment

Section 1–606

Annotated Code of Maryland

(2007 Replacement Volume and 2008 Supplement)

BY repealing and reenacting, with amendments,

Article – Natural Resources

Section 8–1808(d)

Annotated Code of Maryland

(2007 Replacement Volume and 2008 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 16–308 of Article – Environment of the Annotated Code of Maryland be repealed.

SECTION ~~1~~ 2. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Environment

1–101.

(b) “Contested case hearing” means an adjudicatory hearing in accordance with the contested case procedures of Subtitle 2 of the Maryland Administrative Procedure Act.

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) ~~Notwithstanding any other provision of law to the contrary, [the Department is not required to provide an opportunity for] a contested case hearing [to any party other than the applicant] MAY NOT BE PROVIDED in connection with any permit issued pursuant to this article [except the permits] THAT IS listed in subsection (a) of this section~~ **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 ~~RELATING TO FEDERAL ENVIRONMENTAL PERMITS;~~ 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) ~~FOR PERMITS LISTED UNDER SUBSECTION (A) OF THIS SECTION, A CONTESTED CASE HEARING MAY NOT OCCUR.~~

~~(e)~~ (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:**

~~(1)~~ (i) **THE OBJECTIONS WERE NOT REASONABLY ASCERTAINABLE DURING THE COMMENT PERIOD; OR**

~~(2)~~ (ii) **GROUND 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.

~~(F)~~ **(E) 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.**

~~(G) ON MOTION BY A PARTY PETITIONING FOR JUDICIAL REVIEW, THE COURT MAY GRANT A TEMPORARY STAY OF THE ISSUANCE OF THE PERMIT PENDING A FINAL DECISION ON THE PETITION, PROVIDED THAT:~~

~~(1) THE PARTIES TO THE PROCEEDING HAVE BEEN NOTIFIED AND GIVEN AN OPPORTUNITY TO BE HEARD ON A REQUEST FOR THE TEMPORARY STAY;~~

~~(2) THE PARTY REQUESTING THE TEMPORARY STAY SHOWS THAT THERE IS A SUBSTANTIAL LIKELIHOOD OF PREVAILING ON THE MERITS OF ISSUES TO BE PRESENTED IN THEIR PETITION FOR JUDICIAL REVIEW; AND~~

~~(3) THE TEMPORARY STAY WILL NOT ADVERSELY AFFECT THE PUBLIC HEALTH OR SAFETY OR CAUSE SIGNIFICANT, IMMEDIATE ENVIRONMENTAL HARM TO LAND, AIR, OR WATER RESOURCES.~~

~~(c)~~ ~~(H)~~ **(F) (1) When this article requires more than one public informational meeting[,], OR public hearing[,], or contested case 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.

1-603.

(d) (1) The Department may require the applicant to attend an informational meeting or public [or contested case] hearing and present information concerning the application.

1-605.

(a) A person [may request a contested case hearing to appeal a final determination if the person makes factual allegations] **PETITIONING FOR JUDICIAL REVIEW IN ACCORDANCE WITH § 1-601 OF THIS SUBTITLE OR § 5-204 OR § 16-204 OF THIS ARTICLE SHALL ~~ALLEGE FACTS~~ with sufficient particularity to demonstrate that:**

(1) ~~The person [is aggrieved by the final determination]~~ **SATISFIES THE REQUIREMENTS OF § 1-601(C) OF THIS SUBTITLE;** and

(2) ~~The final determination is:~~

(i) ~~Legally inconsistent with any provisions of law applicable to the final determination being challenged; or~~

(ii) ~~Based upon an incorrect determination of a relevant and material fact~~ **FILE THE PETITION IN ACCORDANCE WITH THE MARYLAND RULES.**

(b) [(1)] A party [requesting a contested case hearing] **SUBMITTING A PETITION FOR JUDICIAL REVIEW** shall [submit a written request for adjudication] **FILE THE PETITION** within ~~15~~ **30** days after publication of a notice of final determination.

[(2)] The Department shall transmit a request for a contested case hearing to the Office of Administrative Hearings within 5 business days after the Department receives the request.]

(c) ~~The [request for adjudication] PETITION shall set forth the basis for the request with sufficient particularity to assure that the issues to be raised are within the scope of subsection (a) of this section [and that the person is aggrieved by the final determination]~~ **AN ACTION FOR JUDICIAL REVIEW BROUGHT IN ACCORDANCE WITH § 1-601 OF THIS SUBTITLE OR § 5-204 OR § 16-204 OF THIS ARTICLE, SHALL BE CONDUCTED IN ACCORDANCE WITH THE MARYLAND RULES.**

(d) A party **TO THE JUDICIAL REVIEW ACTION** may not[, in a contested case hearing,] challenge a facility's compliance with zoning and land use requirements or conformity with a county plan issued under Title 9, Subtitle 5 of this article. However, nothing in this subtitle shall prevent a party from challenging whether the Department has complied with §§ 2-404(b)(1)(ii) and 9-210(a)(3) of this article, when applicable, nor does this subtitle prevent a party from contesting the compliance of the facility with zoning and land use or county plan requirements in any proceeding brought in accordance with and under any applicable local laws.

[(e)] A contested case hearing shall be conducted in accordance with Subtitle 2 of Title 10 of the State Government Article.

(f) (1) The contested case hearing shall be concluded, and the record shall be closed:

(i) Within 6 months following receipt of the request for a contested case hearing by the Office of Administrative Hearings; or

(ii) If a motion is filed under § 1–606(a) of this subtitle, within 8 months following receipt of the request for a contested case hearing by the Office of Administrative Hearings.

(2) The deadlines in this subsection may be extended by agreement of the parties and with the concurrence of the administrative law judge.

(g) (1) The administrative law judge shall issue the proposed decision within 90 days following the close of the record in the contested case hearing.

(2) The deadline in this subsection may be extended, at the discretion of the administrative law judge, for an additional period not to exceed 30 days.

(h) (1) Once a proposed decision is issued by the administrative law judge if an exception is not filed with the Department, the proposed decision shall become final upon expiration of the time period for filing an exception.

(2) Once a proposed decision is issued by the administrative law judge if an exception is filed with the Department, the final decision shall be rendered within 120 days following issuance of the proposed decision.

(i) The deadlines in this section shall be considered mandatory and not directory.]

[1–606.

(a) Upon motion of any party, the administrative law judge shall dismiss all or any part of a request for a contested case hearing if the administrative law judge determines that the person making the request has failed to make the demonstration required by § 1–605 of this subtitle, including the failure to make factual allegations with sufficient particularity to demonstrate that the person is aggrieved by the final determination.

(b) (1) The administrative law judge shall rule on any motion filed under subsection (a) of this section within 60 days following receipt of the motion.

(2) The deadline in this subsection may be extended by agreement of the parties and with the concurrence of the administrative law judge.

(c) A decision under subsection (a) of this section that dismisses fewer than all of the issues in an action, or that adjudicates issues concerning fewer than all of the parties to an action is not immediately appealable unless the administrative law judge determines that there is no just reason for delay, and directs the entry of a decision as to one or more, but fewer than all of the issues or parties.

(d) Except as provided under subsection (c) of this section, a decision by the administrative law judge on a motion in accordance with subsection (a) of this section is a final agency decision and shall be appealable in the same manner as a final decision by the Department after a contested case hearing.

(e) The deadlines in this section shall be considered mandatory and not directory.]

1-606.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "BOARD" MEANS THE BOARD OF PUBLIC WORKS.

(3) "LICENSE" MEANS A LICENSE UNDER § 16-202 OF THIS ARTICLE.

(B) THIS SECTION APPLIES TO:

(1) A PERMIT LISTED UNDER § 1-601(A) OF THIS SUBTITLE;

(2) A PERMIT LISTED UNDER § 5-204(F) OF THIS ARTICLE; OR

(3) A LICENSE ISSUED UNDER ~~§ 16-204~~ § 16-202 OF THIS ARTICLE.

~~(B)~~ (C) ANY JUDICIAL REVIEW OF A ~~DEPARTMENT PERMIT DECISION DETERMINATION~~ PROVIDED FOR IN ACCORDANCE WITH § 1-601 OF THIS SUBTITLE OR § 5-204 OR § 16-204 OF THIS ARTICLE SHALL BE LIMITED TO A RECORD COMPILED BY THE DEPARTMENT ~~AND SHALL CONSIST~~ OR BOARD, CONSISTING OF:

(1) ANY PERMIT OR LICENSE APPLICATION AND ANY DATA SUBMITTED TO THE DEPARTMENT OR BOARD IN SUPPORT OF THE APPLICATION;

(2) ANY DRAFT PERMIT OR LICENSE ISSUED BY THE DEPARTMENT OR BOARD;

(3) ANY NOTICE OF INTENT FROM THE DEPARTMENT OR BOARD TO DENY THE APPLICATION OR TO TERMINATE THE PERMIT OR LICENSE;

(4) A STATEMENT OR FACT SHEET EXPLAINING THE BASIS FOR THE DETERMINATION BY THE DEPARTMENT OR BOARD;

(5) ALL DOCUMENTS REFERENCED IN THE STATEMENT OR FACT SHEET EXPLAINING THE BASIS FOR THE DETERMINATION BY THE DEPARTMENT OR BOARD;

(6) ALL DOCUMENTS, EXCEPT DOCUMENTS FOR WHICH DISCLOSURE IS PRECLUDED BY LAW OR THAT ARE SUBJECT TO PRIVILEGE, CONTAINED IN THE SUPPORTING FILE FOR ANY DRAFT PERMIT OR LICENSE;

(7) ALL COMMENTS SUBMITTED TO THE DEPARTMENT OR BOARD DURING THE PUBLIC COMMENT PERIOD, INCLUDING COMMENTS MADE ON THE DRAFT APPLICATION;

(8) ANY TAPE OR TRANSCRIPT OF ANY PUBLIC HEARINGS HELD ON THE APPLICATION; AND

(9) ANY RESPONSE TO ANY COMMENTS SUBMITTED TO THE DEPARTMENT OR BOARD.

~~(c)~~ (D) (1) WHEN A DRAFT PERMIT OR LICENSE OR TENTATIVE DETERMINATION IS ISSUED BY THE DEPARTMENT, THE DEPARTMENT OR BOARD SHALL:

(I) MAKE AVAILABLE FOR INSPECTION AND COPYING NO LATER THAN THE DATE THE PERMIT, DRAFT LICENSE, OR TENTATIVE DETERMINATION IS ISSUED:

1. ALL PERMIT OR LICENSE APPLICATIONS;
2. DOCUMENTS SUBMITTED WITH A PERMIT OR LICENSE APPLICATION; AND

3. ALL DOCUMENTS RELIED ON BY THE DEPARTMENT IN MAKING THE TENTATIVE DETERMINATION; AND

4. A PRIVILEGE LOG THAT IDENTIFIES ALL DOCUMENTS NOT PRODUCED FOR INSPECTION IN ACCORDANCE WITH

SUBSECTION (C)(6) OF THIS SECTION AND STATES THE REASONS FOR WITHHOLDING EACH DOCUMENT; AND

(II) ~~EXTEND ANY EXISTING~~ THE PUBLIC COMMENT PERIOD BY 60 DAYS ON REQUEST BY A PERSON.

(2) A REQUEST SUBMITTED TO THE DEPARTMENT OR BOARD UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION SHALL BE:

(I) SUBMITTED IN WRITING ~~TO THE DEPARTMENT;~~ AND

(II) MADE BEFORE THE EXPIRATION OF THE ORIGINAL COMMENT PERIOD.

(3) A PUBLIC COMMENT PERIOD MAY NOT BE EXTENDED MORE THAN ONCE UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION.

5-204.

(a) (1) It is the intent of the General Assembly to establish consolidated procedures and notice and hearing requirements for Title 5, Subtitles 5 and 9 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.

(b) (1) Applicants shall ascertain the names and addresses of all current owners of property contiguous to the parcel upon which the proposed activity will occur and personally or by certified mail serve notice upon each owner.

(2) Applicants shall serve personally or by certified mail appropriate local officials.

(3) Applicants shall provide the Department with certification that notice has been served on all contiguous property owners and appropriate local officials.

(4) Upon substantial completion of an application the Department shall draft a public notice that includes:

(i) The name and address of the applicant;

(ii) A description of the location and nature of the activity for which application has been made;

(iii) The name, address, and telephone number of the office within the Department from which information about the application may be obtained;

(iv) A statement that any further notices about actions on the application will be provided only by mail to those persons on a mailing list of interested persons;

(v) A description of how persons may submit information or comments about the application, request a public informational hearing, or request to be included on the mailing list of interested persons; and

(vi) A deadline for the close of the public comment period by which information, comments, or requests must be received by the Department.

(5) The Department shall prepare a public notice to be published for at least 1 business day in a newspaper of general circulation in the area where the proposed activity would occur. At its discretion, the Department shall:

(i) Publish the public notice; or

(ii) Direct the applicant to publish the public notice.

(6) The applicant shall bear the cost of the newspaper notice.

(7) The Department shall mail public notices to a general subscription mailing list.

(8) Comments on an application or requests for a public informational hearing must be forwarded in writing to the Department prior to the close of the public comment period specified in the public notice.

(9) The Department shall compile an interested persons list containing the names of all contiguous property owners, appropriate local officials, and individuals that comment on, request hearings, or make inquiries about an application during any phase of the Department's review.

(10) No further notice will be provided except to persons on the interested persons list.

(c) The Department shall hold a public informational hearing if it receives a timely written request in accordance with the following provisions:

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

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

(3) The Department shall specify the date, time, and location of the public hearing.

(4) 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) The Department may extend the official record of a public informational hearing.

(d) Following the application review and comment period and within 30 calendar days after the close of the public informational hearing record, the Department shall issue, modify, or deny the permit or license unless extenuating circumstances justify an extension of time.

(e) The Department shall mail notice of a decision to issue, modify, or deny a permit or license to the applicant and to those persons on the interested persons list.

[(f) When opportunity for a contested case hearing on the Department's decision to issue, modify, or deny a permit or license is provided by law, the Department shall provide all persons on the interested persons list and the applicant an opportunity to make a written request for a contested case hearing within 14 calendar days of the mailing date of the notice of decision.

(g) Upon written request the Department shall grant a contested case hearing if it determines that:

(1) The requester has a specific right, duty, privilege, or interest which is or may be adversely affected by the permit determination or license decision and which is different from that held by the general public;

(2) The requester raises adjudicable issues which are within the scope of the permit authority; and

(3) The request is timely.]

(F) (1) A FINAL ~~DECISION~~ DETERMINATION BY THE DEPARTMENT ON THE ISSUANCE, DENIAL, RENEWAL, OR REVISION OF ANY PERMIT ISSUED UNDER TITLE 5, SUBTITLE 5 OR SUBTITLE 9, § 14-105, § 15-810, § 15-813 § 14-508, § 15-808, OR § 16-307 OF THIS ARTICLE IS SUBJECT TO JUDICIAL REVIEW AT THE REQUEST OF ANY PERSON THAT:

(I) **MEETS THE THRESHOLD STANDING REQUIREMENTS UNDER FEDERAL LAW ~~PERTAINING TO FEDERAL ENVIRONMENTAL PERMITS;~~ AND**

(II) **1. IS THE APPLICANT; OR**

2. PARTICIPATED IN A PUBLIC PARTICIPATION PROCESS THROUGH THE SUBMISSION OF WRITTEN OR ORAL COMMENTS, UNLESS AN OPPORTUNITY FOR PUBLIC PARTICIPATION WAS NOT PROVIDED.

(2) FOR PERMITS LISTED UNDER PARAGRAPH (1) OF THIS SUBSECTION, A CONTESTED CASE HEARING MAY NOT OCCUR.

(G) A PERSON PETITIONING FOR JUDICIAL REVIEW IN ACCORDANCE WITH THIS SECTION SHALL ~~ALLEGE FACTS WITH SUFFICIENT PARTICULARITY TO DEMONSTRATE THAT:~~

~~(1) THE PERSON SATISFIES THE REQUIREMENTS OF SUBSECTION (F)(1) OF THIS SECTION; AND~~

~~(2) THE FINAL DETERMINATION IS:~~

~~(I) LEGALLY INCONSISTENT WITH ANY PROVISIONS OF LAW APPLICABLE TO THE FINAL DETERMINATION BEING CHALLENGED; OR~~

~~(II) BASED ON AN INCORRECT DETERMINATION OF A RELEVANT AND MATERIAL FACT~~ FILE THE PETITION IN ACCORDANCE WITH THE MARYLAND RULES.

(H) (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:

~~(1) (I) THE OBJECTIONS WERE NOT REASONABLY ASCERTAINABLE DURING THE COMMENT PERIOD; OR~~

~~(2) (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.

(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 REVIEW FILED UNDER THIS SECTION SHALL BE FILED IN ACCORDANCE WITH TITLE 1, SUBTITLE 6 OF THIS ARTICLE.

~~[(h)] (J) Upon motion by a party [to a contested case hearing] PETITIONING FOR JUDICIAL REVIEW, the [Department] COURT may grant a temporary stay of the issuance of the permit pending a final decision [in the contested case] ON THE PETITION, provided that:~~

~~(1) The parties to the proceeding have been notified and given an opportunity to be heard on a request for the temporary stay;~~

~~(2) The party requesting the temporary stay shows that there is a substantial likelihood of prevailing on the merits of issues to be presented [during the contested case proceeding]; IN THE PARTY'S PETITION FOR JUDICIAL REVIEW; AND~~

~~(3) The temporary stay will not adversely affect the public health or safety or cause significant, imminent environmental harm to land, air, or water resources; and~~

~~(4) The conditions and criteria for granting a temporary stay as provided in regulations for contested case hearings adopted by the Department have been met.~~

14-105.

(b) The Department shall provide public notice, public informational hearings, and [contested case hearings] JUDICIAL REVIEW in accordance with the provisions of § 5-204 of this article.

14-508.

(b) (1) The Secretary shall adopt regulations as provided in this subsection.

(2) Procedural regulations adopted under this subsection shall:

(i) Provide for notice to interested persons of any decision to issue or deny a permit; AND

(ii) Permit a person to FILE A PETITION FOR JUDICIAL REVIEW IN ACCORDANCE WITH THE PROVISIONS OF § 5-204 OF THIS ARTICLE [request a hearing under Title 10, Subtitle 2 of the State Government Article (Administrative Procedure Act – Contested Cases), if the person makes factual allegations with sufficient particularity to demonstrate that:

1. The person is aggrieved by the decision; and

2. The decision is:

A. Legally inconsistent with any provision of law applicable to the decision being challenged; or

B. Based upon an incorrect determination of a relevant and material fact;

(iii) Provide the Secretary with discretionary authority to stay the effectiveness of the decision pending the outcome of the hearing; and

(iv) Provide that, if a request for a hearing is granted, the Secretary's decision on the application shall be based on the record made in the hearing, including the proposed findings of fact and conclusions of law recommended to the Secretary by the presiding officer].

15-810.

(e) Public notice, informational hearings, and [contested case hearings] **JUDICIAL REVIEW** shall be conducted in accordance with the provisions of § 5-204 of this article.

~~15-813.~~

~~(g) The Department shall provide opportunity for [a contested case hearing] **JUDICIAL REVIEW** in accordance with the provisions of § 5-204 of this article.~~

16-202.

(a) A person may not dredge or fill on State wetlands without a license.

(b) The Secretary shall assist the Board in determining whether to issue a license to dredge or fill State wetlands. The Secretary shall submit a report indicating whether the license should be granted and, if so, the terms, conditions, and

consideration required after consultation with any interested federal, State, and local unit, and after issuing public notice, holding any requested hearing, and taking any evidence the Secretary thinks advisable.

(c) (1) Upon receipt of a report by the Secretary, the Board shall decide if issuance of the license is in the best interest of the State, taking into account the varying ecological, economic, developmental, recreational, and aesthetic values each application presents. If the Board decides to issue the license, the issuance of the license shall be for consideration and on terms and conditions the Board determines. Every license shall be in writing.

16-204.

(A) Any [party to the proceedings aggrieved by the decision of the Board,] **PERSON THAT SATISFIES SUBSECTION (B) OF THIS SECTION** may petition the circuit court in the county where the land is located within 30 days after receiving the decision **OF THE BOARD**. The appeal shall be heard on the record compiled before the Board.

(B) A PARTY HAS STANDING TO FILE A PETITION UNDER SUBSECTION (A) OF THIS SECTION IF THE PARTY:

(1) MEETS THE THRESHOLD STANDING REQUIREMENTS UNDER FEDERAL LAW ~~RELATING TO FEDERAL ENVIRONMENTAL PERMITS~~; 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.

(C) (1) A CONTESTED CASE HEARING MAY NOT OCCUR ON A DECISION OF THE BOARD IN ACCORDANCE WITH § 16-202 OF THIS SUBTITLE.

(2) JUDICIAL REVIEW UNDER THIS SECTION SHALL BE CONDUCTED IN ACCORDANCE WITH TITLE 1, SUBTITLE 6 OF THIS ARTICLE.

16-307.

(d) The Secretary shall provide opportunity for [a contested case hearing] **JUDICIAL REVIEW** in accordance with the provisions of § [5-204(f) through (h)] **5-204** of this article.

16-309.

The court may order the State to pay court costs of any appeal in accordance with the provisions of § 16-306 [or § 16-308] of this subtitle if the court finds that the financial situation of the person appealing warrants this action.

Article – Natural Resources

8-1808.

(d) (1) In this subsection, “unwarranted hardship” means that, without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.

(2) (I) **NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE PROVISIONS OF THIS PARAGRAPH SHALL APPLY TO A PROCEEDING THAT INVOLVES A VARIANCE FOR A DEVELOPMENT ACTIVITY IN THE BUFFER UNDER THE REQUIREMENTS OF:**

- 1. THIS SUBTITLE;**
- 2. A REGULATION ADOPTED UNDER THE AUTHORITY OF THIS SUBTITLE; OR**
- 3. AN APPROVED PROGRAM.**

(II) **IF A PERSON MEETS THE THRESHOLD STANDING REQUIREMENTS UNDER FEDERAL LAW ~~RELATING TO FEDERAL ENVIRONMENTAL PERMITS~~, THE PERSON SHALL HAVE STANDING TO PARTICIPATE AS A PARTY IN A LOCAL ADMINISTRATIVE PROCEEDING.**

(III) **A PERSON THAT HAS STANDING UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH MAY:**

- 1. PARTICIPATE AS A PARTY IN AN ADMINISTRATIVE PROCEEDING AT A BOARD OF APPEALS EVEN IF THE PERSON WAS NOT A PARTY TO THE ORIGINAL ADMINISTRATIVE PROCEEDING; AND**
- 2. PETITION FOR JUDICIAL REVIEW AND PARTICIPATE AS A PARTY EVEN IF THE PERSON WAS NOT A PARTY TO THE ACTION WHICH IS THE SUBJECT OF THE PETITION.**

(3) (i) A local jurisdiction shall process an application for a variance regarding a parcel or lot that is subject to a current violation of this subtitle, a regulation adopted under the authority of this subtitle, or any provision of an order, permit, plan, or local program in accordance with subsection (c)(1)(iii)15 of this section.

(ii) In considering an application for a variance, a local jurisdiction shall presume that the specific development activity in the critical area that is subject to the application and for which a variance is required does not conform with the general purpose and intent of this subtitle, regulations adopted under this subtitle, and the requirements of the local jurisdiction's program.

(iii) If the variance request is based on conditions or circumstances that are the result of actions by the applicant, a local jurisdiction shall consider that fact.

[(3)] (4) (i) An applicant has the burden of proof and the burden of persuasion to overcome the presumption established under paragraph **[(2)(ii)] (3)(II)** of this subsection.

(ii) 1. Based on competent and substantial evidence, a local jurisdiction shall make written findings as to whether the applicant has overcome the presumption established under paragraph **[(2)(i)] (3)(I)** of this subsection.

2. With due regard for the person's experience, technical competence, and specialized knowledge, the written findings may be based on evidence introduced and testimony presented by:

- A. The applicant;
- B. The local jurisdiction or any other government agency; or
- C. Any other person deemed appropriate by the local jurisdiction.

[(4)] (5) A variance to a local jurisdiction's critical area program may not be granted unless:

(i) Due to special features of a site, or special conditions or circumstances peculiar to the applicant's land or structure, a literal enforcement of the critical area program would result in unwarranted hardship to the applicant;

(ii) The local jurisdiction finds that the applicant has satisfied each one of the variance provisions; and

(iii) Without the variance, the applicant would be deprived of a use of land or a structure permitted to others in accordance with the provisions of the critical area program.

[(5)] (6) (i) Within 10 working days after a written decision regarding a variance application is issued, the Commission shall receive a copy of the decision from a local jurisdiction.

(ii) A local jurisdiction may not issue a permit for the activity that was the subject of the variance application until the applicable 30-day appeal period has elapsed.

[(6)] (7) (i) A development activity commenced without a required permit, approval, variance, or special exception is a violation of this subtitle.

(ii) A local jurisdiction may not accept an application for a variance to legalize a violation of this subtitle, including an unpermitted structure or development activity, unless the local jurisdiction first issues a notice of violation, including assessment of an administrative or civil penalty, for the violation.

(iii) If a final adjudication of a notice of violation results in a determination that a violation has occurred, the person shall be liable for a penalty that is twice the amount of the assessment in the notice of violation, in addition to the cost of the hearing and any applicable mitigation costs.

(iv) Application for a variance under this paragraph constitutes a waiver of the right to appeal the terms of a notice of violation and its final adjudication, including the payment of any penalties and costs assessed.

(v) If the local jurisdiction finds that the activity or structure for which a variance is requested commenced without permits or approvals and:

1. Does not meet each of the variance criteria under this subsection, the local jurisdiction shall deny the requested variance and order removal or relocation of any structure and restoration of the affected resources; or

2. Does meet each of the variance criteria under this subsection, the local jurisdiction may grant approval to the requested variance.

[(7)] (8) This subsection does not apply to building permits or activities that comply with a buffer exemption plan or buffer management plan of a local jurisdiction which has been approved by the Commission.

[(8)] (9) Notwithstanding any provision of a local law or ordinance, or the lack of a provision in a local law or ordinance, all of the provisions of this subsection shall apply to, and shall be applied by, a local jurisdiction in the consideration, processing, and decision on an application for a variance.

SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That, for purposes related to the processing of an application for a variance under § 8-1808(d) of the Natural

Resources Article, as enacted under Section ~~1~~ 2 of this Act, the provisions of this Act may not be construed to have any effect on or application to a variance application filed with a local Critical Area program before January 1, 2010.

SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That, it is the intent of the General Assembly that references in this Act to “threshold standing requirements under federal law,” be construed:

(a) In accordance with requirements for individual and associational standing under Article III of the U.S. Constitution and pertinent case law;

(b) In accordance with the ruling in *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333 (1977), which established the essential elements of an association for the purposes of standing; ~~and~~

(c) In the context of the entire body of federal case law regarding standing, as that case law exists on the effective date of this Act and as it may evolve in future rulings; and

(d) To assure that challenges to environmental determinations brought in State court and participation in proceedings under § 8-1808(d) of the Natural Resources Article, as enacted under Section 2 of this Act, are subject to the same standing requirements as applied to similar challenges to federal environmental permits filed in federal courts.

SECTION 5. AND BE IT FURTHER ENACTED, That when considering a motion for a stay in an action brought for judicial review as enacted under Section 2 of this Act, the court shall examine:

(a) The likelihood the plaintiff will succeed on the merits;

(b) The balance of convenience determined by whether greater injury would be done to the defendant by granting the stay than would result from its refusal;

(c) Whether the plaintiff will suffer irreparable injury unless its stay is granted; and

(d) The public interest in granting the stay.

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

SECTION ~~5~~ 7. AND BE IT FURTHER ENACTED, That this Act shall take effect January 1, 2010.

Approved by the Governor, May 19, 2009.