

## ***FACT SHEET***

### ***JUDICIAL REVIEW PROCESS***

Legislation passed by the 2009 General Assembly changes procedures for certain permits issued by the Department, including water appropriation permits. The judicial review procedures took effect on January 1, 2010 and applies to final permit decisions issued on and after January 1, 2010.

Under pre-existing procedures, permit applicants and third parties with standing under Maryland law could challenge the issuance of a permit or the conditions of a permit through a request for a “contested case” adjudicatory hearing conducted by the Office of Administrative Hearings. Effective January 1, 2010, the “contested case” process no longer applies to final decisions on applications for these permits. Rather, permits can be challenged through a request for direct judicial review in the Circuit Court for the county where the activity authorized by the permit will occur. Applicants, and persons who meet standing requirements under federal law and who participated in a public comment process by submitting written or oral comments (where an opportunity for public comment was provided), may seek judicial review. Judicial review will be based on the administrative record for the permit compiled by the Department and limited to issues raised in the public comment process (unless no public comment process was provided, in which case the review will be limited to issues that are connected to the permit).

#### **Who Has Standing?**

Anyone who meets the threshold standing requirements under federal law and is either the applicant or someone who participated in the public participation process through the submission of written or oral comments, as provided in Environment Article § 5-204, Annotated Code of Maryland. The three traditional criteria for establishing standing under federal law are injury, causation, and redressability, although how each criterion is applied is highly fact-specific and varies from case to case. Further, an association has standing under federal law to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are related to the organization’s purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

#### **What is the Procedure for Seeking Judicial Review?**

Petitions for judicial review of a final determination or permit decision subject to judicial review must be filed in accordance with § 1-605 of the Environment Article no later than 30 days following publication by the Department of a notice of final determination or final permit decision and must be filed in the circuit court of the county where the permit application states that the proposed activity will occur. Petitions for judicial review must conform to the applicable Maryland Rules of Civil Procedure (Title 7, Chapter 200).

*To review the legislation follow the link below:*

[http://mgaleg.maryland.gov/2009rs/chapters\\_noln/Ch\\_650\\_sb1065T.pdf](http://mgaleg.maryland.gov/2009rs/chapters_noln/Ch_650_sb1065T.pdf)