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# **Revision to the Washington Severe SIP: Implementation of Section 185 Fee Structure**

*SIP Revision 04-06*

**(Proposed)**

**March 25, 2004**

**Prepared for:**

**U.S. Environmental Protection Agency**

**Prepared by:**

**Maryland Department of the Environment**



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## **Executive Summary**

### **Fee Requirement (Section 185) for Failure to Attain**

Section 185 of the Clean Air Act requires severe nonattainment areas to adopt a penalty fee for major stationary sources if the area fails to attain the National Ambient Air Quality Standards (NAAQS) for ozone by the attainment deadline. The required fee penalty is \$5,000 per ton of VOC or NO<sub>x</sub> emitted in excess of 80 percent of the stationary source's permitted level of emissions. All three jurisdictions included in the Washington D.C. severe nonattainment area are committed to fulfilling the requirements of Section 185.

### **State Activities**

Maryland, Virginia and the District of Columbia have committed to EPA to meet the fee requirement of Section 185 of the Clean Air Act for major stationary sources of VOCs and NO<sub>x</sub>. In the current state legislative session beginning in January 2004, Maryland has submitted legislation that would provide the authority to implement the Section 185 program (Appendix A).

## **Description of Proposed Legislation**

### **Summary**

The legislation will implement a penalty fee collection system should the Washington, DC nonattainment area fail to meet the November 15, 2005 deadline for attainment of the 1-hour ozone NAAQS. The fee amounts will be calculated by MDE for emissions in excess of 80% of the baseline amount, calculated in accordance with 42 U.S.C. § 7511d of the federal Clean Air Act (CAA), taking into consideration any guidance issued by the United States EPA; and be adjusted annually for inflation in accordance with 42 U.S.C. § 7661a(b)(3)(b)(v) of CAA.

The fees would be collected and put into an Ozone Standard Attainment Fund that will be used for air quality control purposes. The fees collected will be invested and re-invested in the same manner as other State funds with investment earnings credited to the fund.

If emissions rise to penalty levels fees will be enacted and MDE will issue annual fee notices with payment due no less than 30 days after receipt of notice. The fee collection program will take effect on October 1, 2004. Please see Appendix A for an unofficial copy of the most current legislation.

# Appendix A: Copy of House Bill 1441

## HOUSE BILL 1441

Unofficial Copy  
Session  
M3

2004 Regular  
4r0164

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By: **Chairman, Environmental Matters Committee (By Request -  
Departmental - Environment)**

Introduced and read first time: February 25, 2004

Assigned to: Rules and Executive Nominations

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### A BILL ENTITLED

1 AN ACT concerning

2 **Air Quality - Emissions Fees**

3 FOR the purpose of requiring certain major stationary sources of air pollution in the  
4 State to pay certain annual fees to the Department of the Environment for  
5 certain emissions under certain circumstances; establishing the manner of  
6 calculating the fees; authorizing an exemption from the fees under certain  
7 circumstances; requiring the Department to issue certain fee notices; requiring  
8 payment of the fees at a certain time; authorizing the Department to reimburse  
9 certain fees under certain circumstances; establishing the Ozone Standard  
10 Attainment Fund; requiring certain fees to be deposited into the Fund;  
11 authorizing the use of the Fund for certain purposes; defining certain terms;  
12 providing for the termination of this Act under certain circumstances; and  
13 generally relating to the establishment and use of fees for air quality control.

14 BY adding to  
15 Article - Environment  
16 Section 2-403.1 and 2-403.2  
17 Annotated Code of Maryland  
18 (1996 Replacement Volume and 2003 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

20 MARYLAND, That the Laws of Maryland read as follows:

21 **Article - Environment**

22 2-403.1.

23 (A) IN THIS SECTION, "ATTAINMENT YEAR" MEANS:

24 (1) THE YEAR THAT THE WASHINGTON, D.C.  
NONATTAINMENT AREA IS  
25 REQUIRED TO ATTAIN THE FEDERAL ONE-HOUR AMBIENT AIR  
QUALITY STANDARD  
26 FOR OZONE; OR

2 **HOUSE BILL 1441**

1 (2) IN THE EVENT OF AN EXTENSION OF THE ATTAINMENT  
DEADLINE  
2 GRANTED IN ACCORDANCE WITH 42 U.S.C. § 7511(A)(5) OR OTHER  
APPLICABLE  
3 PROVISION OF THE CLEAN AIR ACT OR FEDERAL LAW, ANY  
EXTENSION YEAR.

4 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS  
SUBSECTION, ON A  
5 FINDING BY THE UNITED STATES ENVIRONMENTAL PROTECTION  
AGENCY THAT THE  
6 WASHINGTON, D.C. NONATTAINMENT AREA HAS FAILED TO ATTAIN  
THE FEDERAL  
7 ONE-HOUR AMBIENT AIR QUALITY STANDARD FOR OZONE BY THE  
APPLICABLE  
8 ATTAINMENT DATE, EACH MAJOR STATIONARY SOURCE OF VOLATILE  
ORGANIC  
9 COMPOUNDS OR NITROGEN OXIDES LOCATED IN THIS STATE WITHIN  
THE  
10 WASHINGTON, D.C. NONATTAINMENT AREA SHALL PAY AN ANNUAL  
FEE TO THE  
11 DEPARTMENT FOR NITROGEN OXIDE EMISSIONS IF:

12 (I) THE STATIONARY SOURCE QUALIFIES AS MAJOR  
WITH  
13 RESPECT TO NITROGEN OXIDE EMISSIONS; OR

14 (II) FOR VOLATILE ORGANIC COMPOUND EMISSIONS  
IF THE

15 STATIONARY SOURCE QUALIFIES AS MAJOR WITH RESPECT TO  
VOLATILE ORGANIC  
16 COMPOUND EMISSIONS.

17 (2) THE FEE SHALL BE:

18 (I) DETERMINED IN ACCORDANCE WITH  
SUBSECTION (C) OF THIS  
19 SECTION; AND

20 (II) DEPOSITED INTO THE OZONE STANDARD  
ATTAINMENT FUND  
21 ESTABLISHED IN ACCORDANCE WITH § 2-403.2 OF THIS SUBTITLE.

22 (3) NOTWITHSTANDING ANY OTHER PROVISION OF THIS  
SECTION, A  
23 PERSON MAY NOT BE REQUIRED TO PAY ANY FEE UNDER THIS  
SECTION:

24 (I) WITH RESPECT TO ANY EMISSIONS FOR ANY  
YEAR THAT IS  
25 TREATED AS AN EXTENSION YEAR UNDER 42 U.S.C. § 7511(A)(5) OF THE  
FEDERAL  
26 CLEAN AIR ACT; OR

27 (II) IF THAT FEE WOULD NOT OTHERWISE BE  
IMPOSED UNDER 42  
28 U.S.C. § 7511D OF THE FEDERAL CLEAN AIR ACT.

29 (C) (1) THE FEE SHALL:

30 (I) EQUAL \$5,000 FOR EACH TON OF VOLATILE  
ORGANIC  
31 COMPOUNDS OR NITROGEN OXIDES EMITTED EACH YEAR AFTER THE  
ATTAINMENT  
32 YEAR, IN EXCESS OF 80% OF THE BASELINE AMOUNT, CALCULATED IN  
ACCORDANCE  
33 WITH 42 U.S.C. § 7511D OF THE FEDERAL CLEAN AIR ACT, TAKING INTO  
34 CONSIDERATION ANY GUIDANCE ISSUED BY THE UNITED STATES  
ENVIRONMENTAL  
35 PROTECTION AGENCY; AND

36 (II) BE ADJUSTED ANNUALLY FOR INFLATION IN  
ACCORDANCE  
37 WITH 42 U.S.C. § 7661A(B)(3)(B)(V) OF THE FEDERAL CLEAN AIR ACT.

1 (2) A FEE ASSESSED IN ACCORDANCE WITH THIS  
SUBSECTION SHALL BE  
2 PAID FOR EACH CALENDAR YEAR STARTING THE YEAR AFTER THE  
ATTAINMENT  
3 YEAR, AND EACH CALENDAR YEAR THEREAFTER, UNTIL:

4 (I) THE AREA IS DESIGNATED AS IN ATTAINMENT OF  
THE  
5 ONE-HOUR OZONE STANDARD; OR

6 (II) THE FEES ARE NOT REQUIRED BY THE FEDERAL  
CLEAN AIR ACT  
7 OR REGULATIONS PROMULGATED THEREUNDER.

8 (D) (1) THE DEPARTMENT SHALL ISSUE ANNUAL FEE NOTICES.

9 (2) PAYMENT SHALL BE DUE NO LATER THAN 30 DAYS  
AFTER RECEIPT  
10 OF NOTICE.

11 2-403.2.

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

14 (2) "AIR POLLUTION CONTROL DEVICE OR OTHER  
POLLUTION  
15 PREVENTION OR REDUCTION MEASURE" MEANS:

16 (I) A PROJECT THAT RESULTED IN THE REDUCTION  
OR  
17 ELIMINATION OF VOLATILE ORGANIC COMPOUNDS OR NITROGEN  
OXIDES IN A  
18 MANNER THAT CONTRIBUTED TO ATTAINMENT OF THE FEDERAL  
ONE-HOUR  
19 AMBIENT AIR QUALITY STANDARD FOR OZONE; OR

20 (II) ANY OTHER AIR POLLUTION CONTROL DEVICE  
OR OTHER  
21 POLLUTION PREVENTION MEASURE IMPLEMENTED AFTER JANUARY 1,  
2004.

22 (3) "FUND" MEANS THE OZONE STANDARD ATTAINMENT  
FUND.

23 (B) THERE IS AN OZONE STANDARD ATTAINMENT FUND.

24 (C) ALL FEES COLLECTED BY THE DEPARTMENT UNDER THE  
PROVISIONS OF §

25 2-403.1 SHALL BE DEPOSITED INTO THE FUND.

26 (D) (1) ALL FEES PAID INTO THE FUND SHALL BE DEPOSITED  
WITH THE

27 STATE TREASURER TO THE CREDIT OF THE FUND AND SHALL BE  
INVESTED AND

28 REINVESTED IN THE SAME MANNER AS OTHER STATE FUNDS.

29 (2) ANY INVESTMENT EARNINGS SHALL BE CREDITED TO  
THE FUND.

30 (3) THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.

31 (E) THE FUND SHALL BE A CONTINUING NONLAPSING SPECIAL  
FUND THAT IS

32 NOT SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT  
ARTICLE.

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#### HOUSE BILL 1441

1 (F) THE DEPARTMENT SHALL HOLD THE FEES COLLECTED FROM  
EACH

2 PERSON IN SEPARATE ACCOUNTS UNDER THE FUND ONLY FOR  
DISBURSEMENT IN

3 ACCORDANCE WITH SUBSECTION (G) OF THIS SECTION.

4 (G) (1) ANY PERSON THAT HAS PAID FEES INTO THE FUND IN  
ACCORDANCE

5 WITH § 2-403.1 OF THIS SUBTITLE SHALL BE REIMBURSED FROM THAT  
PERSON'S

6 ACCOUNT WITHIN THE FUND FOR COSTS INCURRED IN CONNECTION  
WITH THE

7 INSTALLATION OF AIR POLLUTION CONTROL DEVICES OR OTHER  
POLLUTION

8 PREVENTION OR REDUCTION MEASURES, APPROVED BY THE  
DEPARTMENT.

9 (2) IN THE EVENT THAT THE FEES REQUIRED BY § 2-403.1  
OF THIS

10 SUBTITLE ARE NOT REQUIRED BY THE FEDERAL CLEAN AIR ACT OR  
REGULATIONS

11 ADOPTED UNDER THE CLEAN AIR ACT, ANY BALANCE REMAINING IN  
THE ACCOUNTS

12 AT THAT TIME SHALL BE RETURNED, WITH ACCRUED INTEREST, TO  
EACH PERSON

13 THAT HAS PAID INTO THE FUND, IN ACCORDANCE WITH THE PERSON'S  
14 UNREIMBURSED CONTRIBUTION.

15 (H) ASSETS AND PROCEEDS OF THE FUND AND ITS SEPARATE  
ACCOUNTS MAY

16 ONLY BE USED IN ACCORDANCE WITH THE PROVISIONS OF THIS  
SECTION AND MAY

17 NOT BE BUDGETED OR APPROPRIATED FOR ANY OTHER PURPOSE.

18 (I) (1) THE DEPARTMENT SHALL ADOPT REGULATIONS TO  
IMPLEMENT THE

19 PROVISIONS OF THIS SECTION.

20 (2) ANY REGULATIONS SHALL INCLUDE CRITERIA FOR  
APPROVAL OF

21 POLLUTION CONTROL PROJECTS ELIGIBLE FOR REIMBURSEMENT AND  
PROCEDURES

22 FOR APPLICATION AND REIMBURSEMENT.

23 SECTION 2. AND BE IT FURTHER ENACTED, That in the event the fees  
24 required by this Act are no longer required by the federal Clean Air Act or  
regulations

25 adopted under the Clean Air Act, following return of any balance in the accounts to  
26 each person, the provisions of this Act and any rule or regulation adopted under this  
27 Act, with no further action required by the General Assembly, shall be abrogated  
and

28 of no further force and effect.

29 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take  
30 effect October 1, 2004.