

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 363 (Senators Astle and Simonaire)
Education, Health, and Environmental Affairs

Environment - Use of Coal Combustion By-Products for Reclamation - Bond
Requirements

This bill requires the Maryland Department of the Environment (MDE) to ensure that the holder of a noncoal surface mining permit that authorizes the use of coal combustion by-products (CCBs) for land reclamation file an additional performance bond (in an amount up to \$7,500 per acre) to ensure compliance with State and federal laws.

Fiscal Summary

State Effect: The bill primarily regulates the activities of private entities and does not materially affect State operations or finances.

Local Effect: None.

Small Business Effect: Minimal

Analysis

Current Law:

Financial Assurance for Mining Operations

Prior to mining, a noncoal surface mining permit applicant must file a performance bond for each operation with MDE. Current law limits the amount of the bond to a maximum of \$1,250 per acre. A bond may not be filed for less than \$8,000. MDE is required to determine whether the total bond fee is unreasonable and excessive for a particular tract of land and whether a lower amount is sufficient to cover reclamation. On completion of

the mining operation and after the requirements of the permit have been fully met, MDE must release the bond. The bond is forfeited if the permittee fails to properly reclaim the affected land.

In addition to the State prosecuting a criminal action for violations of the State's surface mining laws, the Attorney General is authorized to bring a civil action in the circuit court of the county or city where a mining operation is located against any person who violates the State's surface mining laws or any regulation, permit, notice, or order issued pursuant to those laws.

Coal Combustion By-products

On December 1, 2008, new regulations developed by MDE for the disposal of CCBs took effect. While the regulations are comprehensive, they imposed several new requirements pertaining to the use of CCBs in mining activities. For example, reclamation sites that use CCBs in noncoal mines are now required to meet standards similar to those that have long been required of industrial solid waste landfills. In addition, dust control measures must be implemented, post-closure monitoring and maintenance must be performed, and MDE may impose other requirements as part of the permitting process. And while these regulations were not immediately enforced due to a lack of funding, Chapter 480 of 2009 established a Coal Combustion By-Products Management Fund comprising fees collected by MDE on each ton of CCBs generated. The fee must be adjusted annually by MDE to ensure that all revenues collected cover the cost to implement MDE's CCB management program, without producing excess revenues.

Chapter 717 of 2009 required MDE to submit regulations defining the beneficial use of CCBs to the Joint Committee on Administrative, Executive, and Legislative Review (AELR), by December 31, 2009. The draft regulations, which were recently submitted to the AELR Committee, define beneficial reuse as the use of CCBs in a manufacturing process to make a product, or as a substitute for a raw material or commercial product, which, in either case, does not create an unreasonable risk to public health or the environment as determined by MDE. The definition specifically excludes the use of CCBs in a mining operation or in mine reclamation activities, however.

Background: CCBs are noncombustible materials generated from burning coal. Approximately 2 million tons of CCBs are currently generated each year in Maryland, primarily from nine power plants. This amount is anticipated to increase as a result of new environmental controls being installed at power plants to collect CCBs from the combustion process.

CCBs are currently either disposed of or beneficially used. According to MDE, uses of coal ash include mine reclamation, structural fill applications, or as a substitute for cement in the production of concrete. According to a 2008 report by the Department of Natural Resources, in 2006 about 46% of CCBs were placed in 4 major disposal sites or used in 10 major beneficial use projects in Maryland.

Under certain geologic conditions, certain types of coal ash can produce high concentrations of potentially toxic constituents (such as arsenic, boron, cadmium, iron, lead, manganese, selenium, sulfate, and thallium) in soil that may leach into surface or groundwater. According to a 2007 report by the U.S. Environmental Protection Agency, groundwater contaminated with CCB waste poses a substantial cancer risk. In addition, without proper controls, MDE reports that coal ash released into the air in large quantities can create a public nuisance and/or cause respiratory problems.

Small Business Effect: MDE advises that there are currently two permittees affected by the bill, each of which will need to increase the amount of principal in their surety bond or other financial assurance instrument from \$1,250 per acre to \$7,500 per acre.

Additional Information

Prior Introductions: None.

Cross File: HB 612 (Delegate Love, *et al.*) - Environmental Matters.

Information Source(s): Anne Arundel, Charles, Frederick, Montgomery, and Somerset counties; Northeast Maryland Waste Disposal Authority; Maryland Department of the Environment; Department of Natural Resources; U.S. Environmental Protection Agency; Department of Legislative Services

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