

Department of Legislative Services  
Maryland General Assembly  
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 364 (Senators Astle and Simonaire)  
Education, Health, and Environmental Affairs

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Environment - Coal Combustion By-Products - Permits

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This bill requires the Maryland Department of the Environment (MDE) to hold an informational meeting with respect to an application for a permit to dispose of coal combustion by-products (CCBs). In addition, MDE must hold a public hearing before issuing a permit to install, materially alter, or materially extend a landfill that accepts CCBs.

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Fiscal Summary

**State Effect:** The bill is not anticipated to materially affect State operations or finances.

MDE advises that the bill's requirements regarding holding informational meetings and public hearings are similar to current practices, and that sending written notice of the public hearings, as required by the bill, has negligible fiscal or operational impact.

**Local Effect:** The bill does not materially affect local operations or finances.

**Small Business Effect:** Minimal or none.

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Analysis

**Bill Summary:** The informational meeting must be held within a five-mile radius of the location where the disposal of CCBs will occur, unless a suitable location is determined by the Secretary of the Environment not to exist in that area.

Written notice of the public hearing required by the bill must be sent to the county in which the landfill project is to occur and any county within a five-mile radius of the landfill.

**Current Law:** Most permits issued by MDE, including permits to install, materially alter, or materially extend landfill systems and incinerators, are required to be accompanied by the following standard notice provisions:

- notice has to be published at least once a week for two consecutive weeks in a daily or weekly newspaper of general circulation in the geographical area in which the proposed facility is located;
- MDE may require notice of an informational meeting or a public hearing by mail to each person requesting the meeting or hearing or to their authorized representatives;
- MDE may provide additional notice by requiring the notice to be posted at the proposed facility or at public facilities in the geographical area of the proposed facility; and
- the applicant bears all costs incurred by MDE in providing notice.

In addition, MDE must provide an opportunity for an informational meeting with respect to a permit application on written request within 10 working days after notice of the application. If the notice of the permit application did not contain notice of an informational meeting, MDE must publish another notice regarding the meeting. MDE may require the permit applicant to attend the informational meeting to present information concerning the application; if the applicant fails to appear, the application may be denied. In practice, MDE advises that it already offers informational meetings and public hearings without requiring that they be requested.

In addition, MDE must post notice of applications for certain permits, including permits for landfills/incinerators, on the department's web site and provide a method for interested persons to electronically request additional notices related to particular permit applications.

In addition to those requirements, an applicant for a permit to install, materially alter, or materially extend a landfill system must give notice of the application by certified mail to (1) the owners of all real property adjoining the site where the proposed project is located; (2) the chairman of the legislative body and any elected executive of the county where the proposed project site is located; (3) the elected executive of any municipal corporation where the proposed project site is located; and (4) any other county within

one mile of where the proposed project site is located. Finally, an applicant for a landfill system permit must give notice of the application, the informational meetings, and hearings to (1) the board of county commissioners or the county council and the chief executive in affected counties; (2) the Department of Natural Resources (DNR); (3) specified members of the Maryland General Assembly; and (4) nearby property owners. The applicant also must post that information on the proposed site.

**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 DNR, 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.

On December 1, 2008, new regulations developed by MDE for the disposal of CCBs took effect. 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.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 614 (Delegate Love, *et al.*) - Environmental Matters.

**Information Source(s):** Caroline, Howard, Montgomery, and Prince George's counties; Baltimore City; Northeast Maryland Waste Disposal Authority; Maryland Department of the Environment; U.S. Environmental Protection Agency; Department of Natural Resources; Department of Legislative Services

**Fiscal Note History:** First Reader - February 22, 2010  
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