

Chapter 137

(Senate Bill 54)

AN ACT concerning

**Surface Mining – Zone of Dewatering Influence – ~~Contested Case Hearing~~
Remedies**

FOR the purpose of requiring a certain surface mining permittee to immediately implement certain safety measures under certain circumstances; specifying that a certain provision of law requiring the Department of the Environment to provide opportunity for a contested case hearing may not be construed to waive stay certain requirements under certain provisions of law relating to the zone of dewatering influence around a surface mine; correcting an obsolete cross reference; making a stylistic change requiring a certain surface mining permittee to permanently replace a certain water supply within a certain zone of dewatering influence within a certain period of time under certain circumstances; authorizing a certain surface mining permittee to seek reimbursement for certain water supply replacement costs under certain circumstances; providing for the construction of certain provisions of law relating to a contested case hearing; making a stylistic change; correcting an obsolete cross-reference; and generally relating to the zone of dewatering influence around a surface mine.

BY repealing and reenacting, without amendments,
Article – Environment
Section 15–801(a), (e), (f), (g), (n), (p), and (u) and 15–812
Annotated Code of Maryland
(2014 Replacement Volume and 2018 Supplement)

BY repealing and reenacting, with amendments,
Article – Environment
Section 15–813
Annotated Code of Maryland
(2014 Replacement Volume and 2018 Supplement)

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

Article – Environment

15–801.

- (a) In this subtitle the following words have the meanings indicated.
- (e) “Department” means the Department of the Environment.

(f) “Land” means the surface of the land upon which surface mining is conducted.

(g) “Landowner” means a person who possesses legal title to the land.

(n) “Permittee” means a person who holds a valid permit to conduct surface mining and reclamation operations approved by the Department under § 15–810 of this subtitle.

(p) “Pit” means the place any minerals are being mined by the surface mining method.

(u) “Surface mining” means all of the following:

(1) The breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals;

(2) Any activity or process constituting all or part of a process for the extraction or removal of minerals from their original location; or

(3) The extraction of sand, gravel, rock, stone, earth, or fill from borrow pits for highway construction purposes or other public facilities.

15–812.

(a) The General Assembly finds that in certain regions of the State dewatering of surface mines located in karst terrain may significantly interfere with water supply wells and may cause in some instances sudden subsidence of land, known as sinkholes. Dewatering in karst terrain may result in property damage to landowners in a definable zone of dewatering influence around a surface mine.

(b) It is the intent of the General Assembly to protect affected property owners in Baltimore, Carroll, Frederick, and Washington counties where karst terrain is found by directing the Department to establish zones of dewatering influence around surface mines in karst terrain and to administer a program requiring permittees to mitigate or compensate affected property owners in these counties.

15–813.

(a) (1) In this section the following words have the meanings indicated.

(2) “Dewater” or “dewatering” means to pump water out of a pit.

(3) “Karst terrain” means an irregular topography that is:

(i) Caused by a solution of limestone and other carbonate rock; and

(ii) Characterized by closed depressions, sinkholes, caverns, solution cavities, and underground channels that, partially or completely, may capture surface streams.

(4) “Lineaments” means the surface manifestation of cracks, fissures, fractures, and zones of weakness that, generally, are observable on aerial photographs as straight or nearly straight lines.

(b) (1) If a permittee is issued a water appropriation permit under § 5–502 of this article to dewater a pit located in karst terrain in Baltimore, Carroll, Frederick, and Washington counties, the Department shall establish, as a condition of the permittee’s surface mining permit under § 15–810 of this subtitle, a zone of dewatering influence around the surface mine.

(2) The areal extent of the zone of dewatering influence shall be based, as appropriate, on local topography, watersheds, aquifer limits, and other hydrogeologic factors, including the occurrence of natural fractures, cracks, crevices, lineaments, igneous dikes, changes in rock type, and variations in the water-bearing characteristics of formations.

(c) **(1)** Within the zone of dewatering influence established under subsection (b)(1) of this section, the permittee shall:

~~(1)~~ **(I)** Replace, at no expense to the owner of real property that is affected by the surface mine dewatering, a water supply that fails as a result of declining ground water levels; ~~and~~

~~(2)~~ **(II)** **ON DISCOVERY OF A SUDDEN SUBSIDENCE OF THE SURFACE OF THE LAND, IMMEDIATELY IMPLEMENT APPROPRIATE SAFETY MEASURES TO PROTECT PUBLIC HEALTH AND SAFETY; AND**

~~(2)~~ ~~(3)~~ **(III)** [Upon] **ON** a determination by the Department of proximate cause after the permittee has received proper notice and an opportunity to respond and provide information, pay monetary compensation to the affected property owner or repair any property damage caused as a result of the sudden subsidence of the surface of the land.

(2) **A PERMITTEE SHALL PERMANENTLY REPLACE A WATER SUPPLY UNDER PARAGRAPH (1)(I) OF THIS SUBSECTION WITHIN 45 DAYS OF THE DATE ON WHICH THE PERMITTEE KNEW OF THE WATER SUPPLY FAILURE.**

(d) (1) An individual domestic water supply within a zone of dewatering influence that is no longer capable of yielding water because of declining water levels shall be considered to be replaced adequately by a permittee if the permittee provides for the affected property owner a new or retrofitted well that is capable of meeting the minimum yield requirements established in regulations adopted by the Department of the Environment during the period of pit dewatering.

(2) A municipal, industrial, commercial, institutional, or farming water supply within a zone of dewatering influence that is no longer capable of yielding water because of declining water levels shall be considered to be replaced adequately by a permittee if the permittee provides for the affected property owner a new or retrofitted well or other alternative water supply that is capable of yielding water equal to the volume used or needed by the property owner before the disruption of water supply.

(e) (1) Real or personal property within the zone of dewatering influence in karst terrain in Baltimore, Carroll, Frederick, and Washington counties found by the Department to have been damaged as a result of sudden land surface subsidence shall be considered to be repaired adequately by a permittee if the permittee returns the damaged property to its condition before the subsidence of the surface of the land.

(2) If the damaged real or personal property is not capable of being restored to its pre-subsidence condition, the permittee shall compensate the owner of the real or personal property monetarily by the difference of the fair market value of the property as the property would exist but for the sudden land subsidence, and the fair market value of the property as a result of the damage.

(3) Notwithstanding the other provisions of this subsection, the permittee and the property owner may agree on monetary compensation or other mitigation in lieu of restoration.

(f) (1) The Department may not require a permittee to replace water supplies, as provided in this section, if the permittee demonstrates to the Department by clear and convincing evidence that the proximate cause of the loss of water supply is not the result of pit dewatering.

(2) THE PERMITTEE MAY SEEK REIMBURSEMENT FOR THE COST OF A WATER SUPPLY REPLACEMENT FROM THE OWNER OF REAL PROPERTY THAT IS AFFECTED BY THE SURFACE MINE DEWATERING IF AFTER THE PERMITTEE REPLACES THE WATER SUPPLY IT IS DETERMINED THAT THE PERMITTEE'S DEWATERING ACTIVITY IS NOT THE PROXIMATE CAUSE OF THE WATER SUPPLY FAILURE.

(g) (1) The Department shall provide opportunity for a contested case hearing in accordance with [the provisions of § 5-204 of this article] **TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.**

(2) THIS SUBSECTION MAY NOT BE CONSTRUED TO ~~WAIVE~~ STAY THE REQUIREMENT TO PERMANENTLY REPLACE A WATER SUPPLY OR ~~REPAIR ANY PROPERTY DAMAGE~~ IMPLEMENT APPROPRIATE SAFETY MEASURES UNDER IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION.

(h) The Department shall adopt regulations to establish an administrative process to expedite the resolution of water supply loss or property damage claims arising under this section.

(i) Compensation, restoration, or mitigation provided by this section does not apply to:

(1) Improvements that are made to real property within an established zone of dewatering influence following a final decision by the Department to issue a surface mining permit; or

(2) Improvements that are made to real property following the establishment of a zone of dewatering influence as a condition of an existing surface mine permit.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2019.

Approved by the Governor, April 18, 2019.