

Department of Legislative Services
 Maryland General Assembly
 2008 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1466

(Chair, Economic Matters Committee)

(By Request – Departmental – Environment)

Economic Matters

Education, Health, and Environmental Affairs

Environment - Coal Combustion By-Products - Fees

This departmental bill establishes a State Coal Combustion By-Products Management Fund within the Maryland Department of the Environment to support a new regulatory program. The bill authorizes MDE, by regulation, to establish a fee to be paid by a generator of specified coal combustion by-products (CCBs) based on a per ton rate of CCBs generated each year. Fees are to be based on MDE’s costs to operate a regulatory program to control the proper disposal of CCBs. The bill establishes the allowable uses of the fund, which generally relate to administering and implementing a regulatory program. MDE is required to adopt specified regulations and to submit an annual report on the status of the fund, the regulatory program, and the necessity to adjust the fee.

The bill takes effect July 1, 2008.

Fiscal Summary

State Effect: Special fund expenditure increase of \$748,000 in FY 2009 to implement the regulatory program and manage the fund; special fund revenues would increase correspondingly as a result of fees established through regulation. Future year estimates are annualized and adjusted for inflation.

| (in dollars) | FY 2009 | FY 2010 | FY 2011 | FY 2012 | FY 2013 |
|----------------|-----------|-----------|-----------|-----------|-----------|
| SF Revenue | \$748,000 | \$790,300 | \$829,800 | \$871,400 | \$915,300 |
| SF Expenditure | 748,000 | 790,300 | 829,800 | 871,400 | 915,300 |
| Net Effect | \$0 | \$0 | \$0 | \$0 | \$0 |

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The bill is not anticipated to have a significant direct effect on local government operations or finances.

Small Business Effect: MDE has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: The fund consists of • fees collected by MDE pursuant to the bill's authority; • funds appropriated by the General Assembly; and • any additional moneys made available from any sources for the purposes of the fund. Unused moneys may not revert to the general fund.

By regulation, MDE may establish and impose a fee in a single amount or in a range of amounts necessary to operate its regulatory program. MDE must give consideration to several specified factors in establishing a fee or range of fees. MDE may not establish a fee on CCBs that are beneficially used or disposed of outside the State. Generators must pay the fee each year at the time the generator submits to MDE the annual report on its generation of CCBs, as required by regulations. If the fee schedule established by MDE exceeds the amount necessary to operate its regulatory program, MDE is required to reduce the fee schedule accordingly.

MDE must use the fund:

- to administer and manage MDE programs relating to the disposal, use, beneficial use, recycling, processing, handling, storage, transport, or management of CCBs;
- to fund all costs incurred by the State for reviewing, inspecting, and evaluating specified data, applications, licenses, permits, requests, plans, analyses, and reports and for associated administrative costs;
- for site assessments, investigations, research, and remedial activities; and
- to develop, propose, or implement regulations, programs, and initiatives to address risks to human health and the environment.

MDE is required to adopt regulations • to implement the bill; • that establish procedures for imposing and collecting the fee; and • that generally relate to the management and administration of the fund.

Current Law: CCBs, such as fly ash, are allowed to be used in a variety of ways subject to certain requirements. Any person who uses pozzolan (fly ash) for landfill is required to do so in a manner that complies with sound engineering practices. A person who uses pozzolan for landfill, structural building, soil improvement, agriculture, soil conditioning, or land reclamation is required to minimize dust and wind erosion and must comply with all MDE silt control regulations and permit requirements.

MDE's Water Management Administration oversees CCB placement in mines and other reclamation sites through mining reclamation permits and discharge permits. If managed as an industrial waste, MDE's Waste Management Administration oversees disposal activities and evaluates recycling activities.

MDE's Waste Management Administration also permits, monitors, and inspects refuse disposal systems. The term "refuse disposal system" includes an incinerator, a transfer station, a landfill system, a landfill, a solid waste processing facility, and any other solid waste acceptance facility.

Background: Fly ash is a byproduct from the burning of coal in power plants that is captured by air pollution control equipment. According to MDE, approximately 2 million tons of coal ash (fly ash and bottom ash, which is heavier than fly ash and is captured at the bottom of the combustion device) is currently generated each year in Maryland, but this amount is anticipated to increase as a result of new environmental controls being installed at power plants. CCBs are currently either disposed of or beneficially used. According to MDE, beneficial uses of coal ash include mine reclamation, structural fill applications, or as a substitute for cement in the production of concrete. According to a 2006 report by the Department of Natural Resources, in 2004 about 49% of CCBs were placed in disposal sites. MDE advises that there are about 20 disposal sites statewide.

If CCBs are not managed properly, constituents of the material can be released into the environment. MDE advises that under certain geologic conditions, certain types of coal ash can produce high concentrations of the constituents (such as selenium, sulfate, arsenic, iron, or manganese) in soil that may leach into surface or groundwater. 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.

MDE advises that the U.S. Environmental Protection Agency has been working on regulations since 2000 to institute additional controls on the management of CCBs.

In response to the recent discovery of contaminated groundwater near a fly ash disposal site (sand and gravel mine) in Gambrills, MDE proposed regulations in December 2007

to provide a regulatory framework for the disposal of CCBs and the use of CCBs for mine reclamation. In general, under the proposed regulations, disposal facilities would need to meet many of the same standards required for industrial solid waste landfills (such as leachate collection, groundwater monitoring, and the use of liners). The use of CCBs in noncoal mines would need to meet standards similar to those required for industrial solid waste landfills. Standards for coal mine reclamation will ensure that only alkaline CCBs are used. For both disposal and mine reclamation sites, dust control measures must be implemented and post-closure monitoring and maintenance must be performed. The proposed regulations would also establish reporting requirements. MDE anticipates that the proposed regulations will likely take effect in May or June 2008.

This bill is intended to provide MDE with the authority to impose a fee to offset its anticipated costs to implement its proposed regulations relating to the disposal and use of CCBs in mine reclamation and future regulations relating to the beneficial use of CCBs, which MDE expects to propose in 2008.

State Fiscal Effect:

Costs to Implement Regulatory Program and Manage Fund

Special fund expenditures could increase by an estimated \$747,980 in fiscal 2009, which accounts for a 90-day start-up delay. This estimate reflects the cost of hiring three geologists (to review geologic and environmental information for proposed disposal and utilization sites and to perform related technical assessments); three public health engineers (to perform technical assessments required during the permit review process and to conduct engineering evaluations of operations and design plans); three environmental compliance specialists (to review environmental monitoring data and conduct inspections); one attorney (to conduct compliance reviews and enforcement activities); one agency budget specialist (to collect fees and manage the fund); and two office services clerks and one office secretary (to provide administrative support). It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses including contractual services for software support, sample analysis, and medical monitoring for the inspectors. The estimate is based largely on the costs to implement MDE's proposed regulations, but also includes costs to manage the new fund.

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|---|------------------|
| Positions | 14 |
| Salaries and Fringe Benefits | \$557,758 |
| Automobile Purchase and Operations | 71,524 |
| Contractual Services | 60,749 |
| Other Equipment/Operating Expenses | <u>57,949</u> |
| Total FY 2009 State Expenditures | \$747,980 |

Costs could be higher to the extent MDE hires any staff prior to October 1, 2008.

Future year expenditures reflect: • full salaries with 4.4% annual increases and 3% employee turnover; and • 2% annual increases in ongoing operating expenses.

Fee Revenues to Offset Anticipated Costs

Fees established by MDE as a result of this bill are to be based on the department's costs to operate its regulatory program, as described above. Accordingly, for purposes of this Fiscal and Policy Note, it is assumed that MDE would establish a fee or range of fees that would generate sufficient special fund revenues to offset its anticipated costs each year. Although approximately 2 million tons of CCBs are currently generated in the State each year, the bill specifies that MDE may *not* impose a fee on CCBs that are beneficially used or disposed of out of State. Because the total amount of CCBs that would fall within this exemption is unknown, a reliable estimate of the average per ton fee cannot be made at this time. Actual fees and associated revenues will depend on the specific regulatory proposal put forth by MDE as a result of this bill.

Other Impacts

The extent to which the bill could affect any State agencies that may generate CCBs is unknown; however, any impact is not anticipated to be significant.

Additional Comments: According to MDE, there are nine large coal-burning facilities that generate CCBs and probably less than a dozen additional smaller generators of CCBs in Maryland. Most CCBs are generated by large corporations, such as Constellation Energy, Mirant, and Allegheny Power.

Legislative Services notes that in proposing its CCB regulations, MDE estimated the costs of its regulatory program at \$593,000 in fiscal 2009; however, that estimate was developed without accounting for precise fiscal year salaries, turnover, benefits, etc., and did not include costs relating to an attorney.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of the Environment, Department of Natural Resources, Department of Legislative Services

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