

Department of Legislative Services
 Maryland General Assembly
 2008 Session

FISCAL AND POLICY NOTE

House Bill 498 (Delegate Kach, *et al.*)
 Environmental Matters

Groundwater Contamination - Level of Methyl Tertiary Butyl Ether - Notice and Cleanup

This bill reduces the level of methyl tertiary butyl ether (MTBE), from 20 parts per billion (ppb) to 5 ppb, that must be present in a monitoring well located in a high-risk groundwater use area to trigger notification requirements under current law. The bill also requires the Maryland Department of the Environment to adopt regulations to ensure the cleanup of MTBE at a level at or in excess of 5 ppb from a high-risk groundwater use area. The responsible person must reimburse MDE for cleanup costs.

Fiscal Summary

State Effect: General/special fund expenditure increase of \$3.9 million in FY 2009 for MDE to conduct additional notifications/cleanups. Future year estimates are annualized and adjusted for inflation. These estimates do not include potential costs for any State facilities found to be responsible parties. Special fund revenues from reimbursements would increase; any increase cannot be reliably estimated at this time.

(\$ in millions)	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
SF Revenue	-	-	-	-	-
GF/SF Exp.	3.9	5.2	5.3	5.4	5.6
Net Effect	(\$3.9)	(\$5.2)	(\$5.3)	(\$5.4)	(\$5.6)

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

Local Effect: Local expenditures could increase to the extent any local governments are found to be responsible parties. Local health department workloads could also increase to the extent MDE requests assistance under the bill.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Chapter 539 of 2005, as amended by Chapter 538 of 2007, requires MDE, upon a finding that specified contaminants, such as MTBE, are present in a monitoring well located in a high-risk groundwater use area in excess of specified levels, to notify the appropriate local health department and, unless the local health department agrees to do so, each owner of property located within one-half mile of the site from which the sample was taken. Under current law, the level of MTBE that triggers such notification is 20 ppb. The person responsible for the oil discharge must reimburse MDE or the local health department for the costs associated with providing the required notice.

Current regulations define a “high risk groundwater use area” as all areas served by individual wells in Anne Arundel, Baltimore, Carroll, Cecil, Charles, Calvert, Frederick, Harford, Howard, Montgomery, and Prince George’s counties. MDE advises, however, that it will be proposing regulations to limit that definition to Baltimore, Carroll, Cecil, Frederick, and Harford counties.

It is generally unlawful for any person to discharge oil into State waters. The Maryland Oil Disaster Containment, Clean-Up and Contingency Fund is a special fund within MDE that is used, among other things, for contingency actions to respond to and clean up oil discharges. The cost of containment, cleanup, removal, and restoration, including attorneys’ fees and litigation costs, must be reimbursed to the State by the person responsible for the discharge.

Background: According to MDE, since Chapter 539 took effect on October 1, 2005, there have been 19 public notifications of groundwater contamination in 5 counties (Baltimore, Carroll, Cecil, Frederick, and Harford). MDE advises that the average mailing has been to 100 property owners.

MDE advises that MTBE cleanup standards in other states generally range from 5 ppb (California) to 240 ppb (Michigan and Texas). Fourteen states, including Pennsylvania, West Virginia, and the District of Columbia, have a cleanup standard of 20 ppb. Five states have a cleanup standard of 40 ppb. Six states, including New Jersey, have a cleanup standard of 70 ppb. Delaware’s cleanup standard is 180 ppb.

MDE advises that achieving cleanup to a level of 5 ppb is generally not achievable with current technologies.

State Fiscal Effect: General/special fund expenditures could increase by an estimated \$3.9 million in fiscal 2009, which accounts for the bill’s October 1, 2008 effective date. This estimate reflects the cost of hiring four geologists and one administrative aide within MDE to research property records, conduct the required notifications, address anticipated

public response, and oversee cleanups at sites where the State leads the cleanups. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses, including contractual services to conduct cleanups at State lead sites, analyze samples, and perform medical monitoring. The information and assumptions used in calculating the estimate are stated below:

- the change in the standard from 20 ppb to 5 ppb will double MDE’s workload;
- 19 cases annually where the State leads the cleanup;
- average cleanup costs of \$250,000 per site;
- an additional 127 cases per year would require notification; and
- an average of 100 letters per notification.

Positions	5
Salaries and Fringe Benefits	\$210,559
Contractual Services	3,570,999
Automobile Purchase/Operations	95,365
Other Equipment/Operating Expenses	<u>64,529</u>
Total FY 2009 MDE Expenditures	\$3,941,452

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

Responsible parties are required to reimburse MDE for the costs associated with notification and cleanup. Accordingly, special fund revenues from reimbursements would increase. However, MDE advises that reimbursements are generally not recovered in the same year that costs are incurred. In addition, in some cases MDE never receives reimbursement. Accordingly, a reliable estimate of reimbursements by fiscal year cannot be made at this time. It is assumed that MDE would use special funds to pay for costs incurred to the extent possible. However, if reimbursements or available fund balances do not generally cover MDE’s costs from year to year, general funds may be needed.

Legislative Services also notes that there are four State-owned facilities within the high-risk groundwater use area that could be affected to the extent those sites are found to have MTBE contamination at or above 5 ppb. Accordingly, State expenditures could

increase to reimburse MDE for notification costs and to pay for potentially expensive cleanups.

Local Expenditures: Local governments that own and operate their own centralized fueling facilities, landfills, and other properties could be affected to the extent those sites are found to have MTBE contamination at or above 5 ppb. Those responsible for the contamination would be required to reimburse MDE for notification costs and to pay for potentially expensive cleanups. MDE advises that local governments own and operate 6 fueling facilities and 14 landfills in the 5 counties within the high-risk groundwater use area that have had previous MTBE cases.

In addition, MDE advises that due to the significant increase in the number of groundwater contamination cases anticipated as a result of the bill, it would likely request assistance from local health departments with notification activities. Accordingly, the bill could result in an increase in workload for local health departments in the high-risk groundwater use area where contamination is found.

Small Business Effect: According to MDE, there are 168 gas stations and 5 privately-owned landfills in the five counties within the high-risk groundwater use area that have had previous MTBE cases and nearly 1,000 gas stations in the entire high-risk groundwater use area as defined in current regulations. Owners and operators of such businesses could be affected to the extent those sites are found to have MTBE contamination at or above 5 ppb. Responsible parties would be required to reimburse MDE for notification costs and to pay for potentially expensive cleanups.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of the Environment, Department of Health and Mental Hygiene, Calvert County, Carroll County, Kent County, Prince George's County, Washington County, Department of Legislative Services

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