

HOUSE BILL 804

M3

9lr1265

By: **Delegates King and Love**

Introduced and read first time: February 11, 2009

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Environment - Coal Combustion By-Product Disposal Facilities**

3 FOR the purpose of requiring certain permits to be issued in accordance with certain
4 requirements; prohibiting the installation, alteration, or extension of a coal
5 combustion by-product disposal facility without a certain permit; requiring an
6 applicant for a certain permit to submit certain information to the Secretary of
7 the Environment; authorizing the Secretary to deny a certain permit based on
8 the results of certain tests; requiring an applicant for a certain permit to send
9 notice of the application to certain persons; requiring an applicant for a certain
10 permit to post certain notices; requiring a certain meeting to be held in a certain
11 location; requiring the Department of the Environment to establish the format
12 for certain required signs; requiring a certain sign to be posted for a certain
13 number of days; requiring an applicant for a certain facility to send notice of
14 certain meetings and hearings to certain persons; authorizing the Department
15 to consolidate certain meetings and hearings; prohibiting the Secretary from
16 issuing a certain permit until certain requirements are satisfied; prohibiting the
17 operation of a certain facility without a certain permit; requiring an applicant
18 for a certain facility to conduct a certain study, submit plans for certain
19 monitoring systems, and submit plans for reporting certain air and
20 groundwater conditions; requiring a person who operates a certain facility to
21 submit certain reports regarding air and groundwater monitoring data to
22 certain persons; requiring all required testing and monitoring to be performed
23 by a laboratory accredited by a certain organization; prohibiting the Secretary
24 from issuing a permit for a certain facility if coal combustion by-products will
25 be placed within a certain distance of an adjacent property; requiring an
26 applicant for a certain facility to file a certain bond payable to the State;
27 establishing the minimum amount of a certain required bond; prohibiting the
28 release of a certain bond for a certain period of time; increasing the amount of
29 the bond required for certain mining operations under certain circumstances;
30 requiring the Department to ensure that the amount of a certain bond is
31 sufficient to ensure compliance with federal and State environmental laws;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 making stylistic changes; defining certain terms; and generally relating to the
2 disposal of coal combustion by-products.

3 BY repealing and reenacting, with amendments,
4 Article – Environment
5 Section 1–601, 9–204(a), (c), (d), (e), (f), and (h), 9–204.2, 9–209, 9–210(a), and
6 15–823(b)
7 Annotated Code of Maryland
8 (2007 Replacement Volume and 2008 Supplement)

9 BY repealing and reenacting, without amendments,
10 Article – Environment
11 Section 1–602, 9–201(a), 9–210(b), and 15–823(a) and (c)
12 Annotated Code of Maryland
13 (2007 Replacement Volume and 2008 Supplement)

14 BY adding to
15 Article – Environment
16 Section 9–201(a–1) and (a–2) and 9–210.1
17 Annotated Code of Maryland
18 (2007 Replacement Volume and 2008 Supplement)

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

21 **Article – Environment**

22 1–601.

23 (a) Permits issued by the Department under the following sections shall be
24 issued in accordance with this subtitle:

25 (1) Air quality control permits to construct subject to § 2–404 of this
26 article;

27 (2) Permits to install, materially alter or materially extend landfill
28 systems, incinerators for public use or rubble landfills subject to § 9–209 of this article;

29 (3) Permits to discharge pollutants to waters of the State issued
30 pursuant to § 9–323 of this article;

31 (4) Permits to install, materially alter or materially extend a structure
32 used for storage or distribution of any type of sewage sludge issued, renewed, or
33 amended pursuant to § 9–234.1 or § 9–238 of this article;

34 (5) Permits to own, operate, establish or maintain a controlled
35 hazardous substance facility issued pursuant to § 7–232 of this article;

1 (6) Permits to own, operate, or maintain a hazardous material facility
2 issued pursuant to § 7-103 of this article; [and]

3 (7) Permits to own, operate, establish or maintain a low-level nuclear
4 waste facility issued pursuant to § 7-233 of this article; **AND**

5 **(8) PERMITS TO OPERATE, INSTALL, MATERIALLY ALTER, OR**
6 **MATERIALLY EXTEND A COAL COMBUSTION BY-PRODUCT DISPOSAL FACILITY,**
7 **ISSUED PURSUANT TO §§ 9-204 AND 9-210.1 OF THIS ARTICLE.**

8 (b) Notwithstanding any other provision of law to the contrary, the
9 Department is not required to provide an opportunity for a contested case hearing to
10 any party other than the applicant in connection with any permit issued pursuant to
11 this article except the permits listed in subsection (a) of this section.

12 (c) (1) When this article requires more than one public informational
13 meeting, public hearing, or contested case hearing, the Department may consolidate
14 some or all of the meetings or hearings for the proposed facility with similar meetings
15 or hearings.

16 (2) The Department shall hold public informational meetings and
17 public hearings at a location in the political subdivision and in close proximity to the
18 location where the individual permit applies.

19 1-602.

20 (a) Wherever this subtitle requires the Department to publish notice:

21 (1) Notice shall be published at least once a week for 2 consecutive
22 weeks in a daily or weekly newspaper of general circulation in the geographical area
23 in which the proposed facility is located;

24 (2) The Department may require notice of an informational meeting or
25 a public hearing by mail to each person requesting the meeting or hearing or to their
26 authorized representatives;

27 (3) The Department may provide additional notice by requiring the
28 notice to be posted at the proposed facility or at public facilities in the geographical
29 area of the proposed facility; and

30 (4) The applicant shall bear all costs incurred by the Department in
31 providing notice.

32 (b) The Department may publish the notice or require the applicant to
33 publish the notice.

34 9-201.

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

2 (A-1) (1) **“COAL COMBUSTION BY-PRODUCT” MEANS THE RESIDUE**
3 **GENERATED BY OR RESULTING FROM THE BURNING OF COAL.**

4 (2) **“COAL COMBUSTION BY-PRODUCT” INCLUDES:**

5 (I) **FLY ASH;**

6 (II) **BOTTOM ASH;**

7 (III) **BOILER SLAG;**

8 (IV) **POZZOLAN, AS DEFINED IN § 15-407 OF THIS ARTICLE;**

9 **AND**

10 (V) **SOLID RESIDUALS REMOVED BY AIR POLLUTION**
11 **CONTROL DEVICES FROM THE FLUE GAS AND COMBUSTION CHAMBERS OF**
12 **COAL-BURNING FURNACES AND BOILERS.**

13 (A-2) **“COAL COMBUSTION BY-PRODUCT DISPOSAL FACILITY” MEANS A**
14 **FACILITY OR SITE AT WHICH COAL COMBUSTION BY-PRODUCTS ARE OR WILL BE**
15 **DISPOSED.**

16 9-204.

17 (a) This section applies to any:

18 (1) [water] **WATER** supply system[.];

19 (2) [sewerage] **SEWERAGE** system[.];

20 (3) [refuse] **REFUSE** disposal system that is for public use[, or any
21 refuse];

22 (4) **COAL COMBUSTION BY-PRODUCT DISPOSAL FACILITY; OR**

23 (5) **REFUSE** disposal system that is a solid waste acceptance facility
24 as defined in § 9-501(n) of this title if the solid waste acceptance facility is installed,
25 altered, or extended after July 1, 1988.

26 (c) (1) Before a person draws plans or submits an application under this
27 section for a proposed water supply system, sewerage system, [or] refuse disposal
28 system, **OR COAL COMBUSTION BY-PRODUCT DISPOSAL FACILITY**, the person may

1 submit to the Secretary a preliminary statement on the proposed system **OR**
2 **FACILITY.**

3 (2) At the request of the person, the Secretary shall outline the
4 general requirements that must be met before the Secretary would approve the
5 proposed system **OR FACILITY.**

6 (d) A person shall have a permit issued by the Secretary under this section
7 before the person installs, materially alters, or materially extends a water supply
8 system, sewerage system, [or] refuse disposal system, **OR COAL COMBUSTION**
9 **BY-PRODUCT DISPOSAL FACILITY.**

10 (e) An applicant for a permit shall:

11 (1) Submit to the Secretary an application that contains:

12 (i) The complete plans and specifications for the installation,
13 alteration, or extension of the water supply system, sewerage system, [or] refuse
14 disposal system, **OR COAL COMBUSTION BY-PRODUCT DISPOSAL FACILITY;**

15 (ii) For any application related to any solid waste acceptance
16 facility in the areas of Baltimore City designated by the United States Post Office as
17 zip code numbers 21225, 21226, and 21230, a groundwater and surface water impact
18 analysis prepared at the expense of the applicant regarding the proposed installation,
19 alteration, or extension; [and]

20 **(III) FOR ANY APPLICATION RELATED TO ANY COAL**
21 **COMBUSTION BY-PRODUCT DISPOSAL FACILITY, THE HYDROGEOLOGIC STUDY**
22 **REQUIRED UNDER § 9-210.1(D)(1) OF THIS SUBTITLE; AND**

23 ~~[(iii)]~~ **(IV)** Any other information that the Secretary requires;

24 (2) Submit to the Secretary any material change in the plans and
25 specifications, with the reason for the change; and

26 (3) Pay the permit fee set by the Department.

27 (f) Results of any groundwater and surface water impact analysis required
28 under [subsection (e)(1)(ii) of this section] **THIS SUBTITLE** may be a basis for the
29 Secretary's denial of a permit.

30 (h) A person may not:

31 (1) Install, materially alter, or materially extend a water supply
32 system, sewerage system, [or] refuse disposal system, **OR COAL COMBUSTION**

1 **BY-PRODUCT DISPOSAL FACILITY** in this State except in accordance with a permit
2 issued to the person by the Secretary under this section; or

3 (2) Embodiment any material change in construction until the Secretary
4 has issued a revised permit based on the submission to the Secretary under subsection
5 (e)(2) of this section.

6 9-204.2.

7 (a) In addition to the requirements of § 9-204 of this subtitle and Title 1,
8 Subtitle 6 of this article, an applicant for a permit to install, materially alter, or
9 materially extend a landfill system **OR COAL COMBUSTION BY-PRODUCT DISPOSAL**
10 **FACILITY** shall give notice of the application by certified mail to:

11 (1) The owners of all real property adjoining the site where the
12 proposed project is located;

13 (2) The chairman of the legislative body and any elected executive of
14 the county where the proposed project site is located;

15 (3) The elected executive of any municipal corporation where the
16 proposed project site is located; and

17 (4) [Any] **THE CHAIRMAN OF THE LEGISLATIVE BODY AND ANY**
18 **ELECTED EXECUTIVE OF ANY** other county within 1 mile of where the proposed
19 project site is located.

20 (b) Any informational meeting required by § 1-603 of this article shall be
21 held in the county where the proposed facility is to be located.

22 (c) **IN ADDITION TO THE REQUIREMENTS OF THIS SECTION, AN**
23 **APPLICANT FOR A PERMIT TO INSTALL, MATERIALLY ALTER, OR MATERIALLY**
24 **EXTEND A COAL COMBUSTION BY-PRODUCT DISPOSAL FACILITY:**

25 (1) **SHALL GIVE NOTICE OF THE APPLICATION BY:**

26 (i) **POSTING A SIGN NOT MORE THAN 10 FEET FROM EACH**
27 **BOUNDARY OF THE SITE PROPERTY THAT ABUTS A PUBLIC ROAD OR NAVIGABLE**
28 **WATER; OR**

29 (ii) **POSTING ONE OR MORE SIGNS IN LOCATIONS THAT CAN**
30 **BE READILY SEEN BY THE PUBLIC, IF THE PROPERTY DOES NOT ABUT A PUBLIC**
31 **ROAD; AND**

1 (2) **SHALL HOLD AN INFORMATIONAL MEETING WITHIN 7 MILES**
2 **OF THE FACILITY IN THE COUNTY WHERE THE PROPOSED COAL COMBUSTION**
3 **BY-PRODUCT DISPOSAL FACILITY IS TO BE LOCATED.**

4 (D) (1) **THE DEPARTMENT SHALL ESTABLISH THE FORMAT FOR THE**
5 **SIGNS REQUIRED UNDER SUBSECTION (C)(1) OF THIS SECTION.**

6 (2) **A SIGN POSTED IN ACCORDANCE WITH SUBSECTION (C)(1) OF**
7 **THIS SECTION SHALL BE POSTED FOR A PERIOD NOT LESS THAN 30 DAYS**
8 **BEFORE THE DATE OF ANY HEARING OR PUBLIC INFORMATIONAL MEETING.**

9 9-209.

10 (a) The applicant shall give notice of the application, the informational
11 meeting, and hearings:

12 (1) To the public in compliance with Title 1, Subtitle 6 of this article;

13 (2) To the board of county commissioners or the county council of any
14 county and the chief executive of any county or municipal corporation that the
15 Department determines may be affected by the incinerator for public use [or], landfill
16 system, **OR COAL COMBUSTION BY-PRODUCT DISPOSAL FACILITY**, by certified
17 mail;

18 (3) To the Department of Natural Resources, by certified mail;

19 (4) To each member of the General Assembly representing any part of
20 a county in which the landfill system, **COAL COMBUSTION BY-PRODUCT DISPOSAL**
21 **FACILITY**, or incinerator is located, by certified mail;

22 (5) To record owners of real property within 1,000 feet of the property
23 line of the proposed incinerator for public use, **COAL COMBUSTION BY-PRODUCT**
24 **DISPOSAL FACILITY**, or landfill system, by certified mail to the addresses of record
25 owners as indicated in the records of the State Department of Assessments and
26 Taxation; and

27 (6) By posting a notice of the application, the informational meeting,
28 and hearings in a conspicuous space on the site of the proposed incinerator for public
29 use, **COAL COMBUSTION BY-PRODUCT DISPOSAL FACILITY**, or landfill system.

30 (b) The local officials notified under subsection (a)(2) of this section shall give
31 notice of the application, the informational meeting, and hearings to all interested
32 agencies of their respective jurisdictions.

33 (c) To the extent practicable, the Department and other units of the State
34 government shall consolidate the informational meeting and hearings concerning

1 permits for the same landfill system, **COAL COMBUSTION BY-PRODUCT DISPOSAL**
2 **FACILITY**, or incinerator for public use.

3 9-210.

4 (a) Subject to the provisions of subsection (b) of this section, the Secretary
5 may not issue a permit to install, materially alter, or materially extend a refuse
6 disposal system **OR A COAL COMBUSTION BY-PRODUCT DISPOSAL FACILITY**
7 regulated under § 9-204(a) of this subtitle until the requirements set forth in this
8 subsection are met in the following sequence:

9 (1) Except for the opportunity for a public informational meeting, the
10 Department has completed its preliminary phase 1 technical review of the proposed
11 refuse disposal system **OR COAL COMBUSTION BY-PRODUCT DISPOSAL FACILITY**;

12 (2) The Department has reported the findings of its preliminary phase
13 1 technical review, in writing, to the county's chief elected official and planning
14 commission of the county where the proposed refuse disposal system **OR COAL**
15 **COMBUSTION BY-PRODUCT DISPOSAL FACILITY** is to be located; and

16 (3) The county has completed its review of the proposed refuse
17 disposal system **OR A COAL COMBUSTION BY-PRODUCT DISPOSAL FACILITY**, and
18 has provided to the Department a written statement that the refuse disposal system
19 **OR A COAL COMBUSTION BY-PRODUCT DISPOSAL FACILITY**:

20 (i) Meets all applicable county zoning and land use
21 requirements; and

22 (ii) Is in conformity with the county solid waste plan.

23 (b) Upon completion of the requirements of subsection (a)(1) and (2) of this
24 section, the Department shall cease processing the permit application until the
25 requirements of subsection (a)(3) of this section are met.

26 **9-210.1.**

27 (A) **THIS SECTION APPLIES TO ANY COAL COMBUSTION BY-PRODUCT**
28 **DISPOSAL FACILITY.**

29 (B) **A PERSON SHALL HAVE A PERMIT ISSUED BY THE SECRETARY**
30 **UNDER THIS SECTION BEFORE THE PERSON OPERATES, INSTALLS, MATERIALLY**
31 **ALTERS, OR MATERIALLY EXTENDS A COAL COMBUSTION BY-PRODUCT**
32 **DISPOSAL FACILITY.**

33 (C) **IN ADDITION TO THE PROVISIONS OF THIS SECTION, A PERMIT TO**
34 **OPERATE, INSTALL, MATERIALLY ALTER, OR MATERIALLY EXTEND A COAL**

1 COMBUSTION BY-PRODUCT DISPOSAL FACILITY SHALL BE ISSUED BY THE
2 SECRETARY IN ACCORDANCE WITH §§ 9-204 AND 9-210 OF THIS SUBTITLE.

3 (D) AN APPLICANT FOR A PERMIT SHALL:

4 (1) CONDUCT A HYDROGEOLOGIC STUDY THAT PROVIDES AN
5 ASSESSMENT OF THE SOIL AND GROUNDWATER CONDITIONS AND REGIONAL
6 WATER QUALITY DATA OF ANY AQUIFER USED FOR WATER SUPPLY WELLS
7 WITHIN 5,000 FEET UP GRADIENT AND DOWN GRADIENT OF THE PROPOSED
8 COAL COMBUSTION BY-PRODUCT DISPOSAL FACILITY;

9 (2) SUBMIT A PLAN FOR AN AIR QUALITY CONTROL MONITORING
10 SYSTEM TO DETERMINE WHETHER THE PLACEMENT OF COAL COMBUSTION
11 BY-PRODUCTS VIOLATES THE STANDARDS ESTABLISHED IN ACCORDANCE WITH
12 LAW OR REGULATION;

13 (3) SUBMIT A PLAN FOR A GROUNDWATER QUALITY CONTROL
14 MONITORING SYSTEM TO DETERMINE WHETHER THE PLACEMENT OF COAL
15 COMBUSTION BY-PRODUCTS VIOLATES THE STANDARDS ESTABLISHED IN
16 ACCORDANCE WITH LAW OR REGULATION; AND

17 (4) SUBMIT A PLAN FOR REPORTING:

18 (I) PARTICULATE CONCENTRATIONS IN AMBIENT AIR AT A
19 LOCATION OR LOCATIONS ALONG THE FACILITY PERIMETER; AND

20 (II) GROUNDWATER CONDITIONS AT A LOCATION OR
21 LOCATIONS ALONG THE FACILITY PERIMETER.

22 (E) ANY PERSON WHO OPERATES A COAL COMBUSTION BY-PRODUCT
23 DISPOSAL FACILITY SHALL SUBMIT TO THE DEPARTMENT AND LOCAL HEALTH
24 DEPARTMENT:

25 (1) A QUARTERLY REPORT OF ALL AIR AND GROUNDWATER
26 MONITORING DATA; AND

27 (2) A REPORT WITHIN 30 DAYS AFTER ANY TESTING RESULTS
28 INDICATING AIR OR WATER QUALITY STANDARDS ESTABLISHED BY LAW OR
29 REGULATION HAVE BEEN EXCEEDED.

30 (F) (1) ALL TESTING AND MONITORING REQUIRED IN THIS SECTION
31 SHALL BE PERFORMED BY A LABORATORY ACCREDITED BY THE NELAC
32 INSTITUTE.

1 **(2) THE STUDY REQUIRED UNDER SUBSECTION (D)(1) OF THIS**
2 **SECTION SHALL BE PREPARED AT THE EXPENSE OF THE APPLICANT.**

3 **(G) THE SECRETARY MAY NOT ISSUE ANY PERMIT UNDER THIS SECTION**
4 **TO CONSTRUCT OR OPERATE A COAL COMBUSTION BY-PRODUCT DISPOSAL**
5 **FACILITY WHERE COAL COMBUSTION BY-PRODUCTS ARE PLACED WITHIN 1,000**
6 **FEET OF AN ADJACENT PROPERTY.**

7 **(H) (1) AN APPLICANT FOR A PERMIT UNDER THIS SECTION SHALL**
8 **FILE WITH THE DEPARTMENT A BOND FOR THE COAL COMBUSTION**
9 **BY-PRODUCT DISPOSAL FACILITY, ON A FORM TO BE PRESCRIBED AND**
10 **FURNISHED BY THE DEPARTMENT, PAYABLE TO THE STATE AND CONDITIONED**
11 **THAT THE FACILITY OPERATOR WILL PERFORM FAITHFULLY ALL THE**
12 **REQUIREMENTS OF THIS SUBTITLE.**

13 **(2) THE AMOUNT OF THE BOND REQUIRED UNDER PARAGRAPH**
14 **(1) OF THIS SUBSECTION SHALL BE:**

15 **(I) AN AMOUNT DETERMINED BY THE DEPARTMENT TO**
16 **SUFFICIENTLY GUARANTEE PERFORMANCE OF RECLAMATION AND**
17 **REMEDICATION OF THE AFFECTED PROPERTY; AND**

18 **(II) AT LEAST \$7,500 BUT NOT MORE THAN \$15,000 PER**
19 **ACRE.**

20 **(3) THE BOND MAY NOT BE RELEASED EARLIER THAN 5 YEARS**
21 **AFTER THE CLOSURE OF THE COAL COMBUSTION BY-PRODUCT DISPOSAL**
22 **FACILITY.**

23 15-823.

24 (a) After receiving notification from the Department that the application for
25 a permit has been approved, but prior to commencing mining, the applicant shall file
26 with the Department a bond for each mining operation, on a form to be prescribed and
27 furnished by the Department, payable to the State and conditioned that the operator
28 will perform faithfully all the requirements of this subtitle.

29 (b) (1) [The] **UNLESS COAL COMBUSTION BY-PRODUCTS WILL BE**
30 **DISPOSED OF AT THE AFFECTED LAND, THE** amount of the bond required shall be
31 for a maximum of \$1,250 per acre based on the number of acres of affected land
32 covered by the permit. But, a bond may not be filed for less than \$8,000. However, the
33 Department shall determine whether the total bond fee is unreasonable and excessive
34 for a particular tract of land and whether a lesser total amount for the bond is
35 sufficient to cover reclamation. In making this determination, the Department shall
36 consider the size of the operation, the amount of land to be mined, the acreage that is

1 unreclaimed at any one time, the proposed method of regrading and revegetation of
2 the site, the proposed use of the land following reclamation, and any other relevant
3 factors.

4 **(2) IF COAL COMBUSTION BY-PRODUCTS WILL BE DISPOSED OF**
5 **AT THE AFFECTED LAND, THE AMOUNT OF THE BOND REQUIRED SHALL BE:**

6 **(I) AN AMOUNT DETERMINED BY THE DEPARTMENT TO**
7 **SUFFICIENTLY GUARANTEE PERFORMANCE OF RECLAMATION AND**
8 **REMEDICATION OF THE AFFECTED PROPERTY; AND**

9 **(II) AT LEAST \$7,500 BUT NOT MORE THAN \$10,000 PER**
10 **ACRE.**

11 **(3) THE DEPARTMENT SHALL ENSURE THAT THE AMOUNT OF A**
12 **BOND IS SUFFICIENT TO ENSURE COMPLIANCE WITH FEDERAL AND STATE**
13 **ENVIRONMENTAL LAWS.**

14 (c) Liability under the bond shall be for the duration of the mining permit
15 and for a period of five years after its expiration, unless previously released in whole
16 or in part, as provided in § 15-824 of this subtitle.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 2009.