

HOUSE BILL 1536

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By: **Delegate Hucker**

Introduced and read first time: March 9, 2009

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Department of the Environment - Licensing and Permitting Prohibited for**
3 **Mountaintop Removal Coal Mining**

4 FOR the purpose of adding mountaintop removal coal mining to the list of activities
5 that are included in the definition of surface mining; prohibiting the
6 Department of the Environment from issuing or renewing a surface mining
7 license if the applicant will be engaging in mountaintop removal coal mining;
8 requiring the Department to deny a certain permit if the applicant will be
9 engaging in mountaintop removal coal mining; defining a certain term; and
10 generally relating to the authority of the Department of the Environment to
11 prohibit a person from conducting mountaintop removal coal mining.

12 BY repealing and reenacting, with amendments,
13 Article - Environment
14 Section 15-801, 15-807(d), and 15-810
15 Annotated Code of Maryland
16 (2007 Replacement Volume and 2008 Supplement)

17 BY repealing and reenacting, without amendments,
18 Article - Environment
19 Section 15-807(a)
20 Annotated Code of Maryland
21 (2007 Replacement Volume and 2008 Supplement)

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

24 **Article - Environment**

25 15-801.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

2 (b) “Affected land” means the land from which the mineral is removed by
3 surface mining, and all other land area in which the natural land surface has been
4 disturbed as a result of or incidental to the surface mining activities of the permittee,
5 including private ways and roads appurtenant to the area, land excavations, workings,
6 refuse piles, spoil piles, and tailings.

7 (c) “Borrow pit” means an area from which soil or other unconsolidated
8 materials are removed to be used, without further processing, as fill for activities such
9 as landscaping, building construction, or highway construction and maintenance.

10 (d) “Contiguous” means in actual contact, sharing a common property
11 boundary, or separated only by a stream or the right-of-way of a road or highway.

12 (e) “Department” means the Department of the Environment.

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

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

16 (h) “Licensee” means a person who is authorized by the Department to
17 conduct surface mining and reclamation activities under § 15-807 of this subtitle.

18 (i) “Minerals” means any solid material, aggregate, or substance of
19 commercial value, whether consolidated or loose, found in natural deposits on or in the
20 earth, including clay, diatomaceous earth, gravel, marl, metallic ores, sand, shell, soil,
21 and stone. The term does not include coal.

22 (j) “Mining and reclamation plan” means the permittee’s written proposal as
23 required and approved by the Department for the conduct of mining and the
24 reclamation of the affected land.

25 (k) **(1) “MOUNTAINTOP REMOVAL COAL MINING” MEANS ANY**
26 **METHOD OF SURFACE MINING THAT REMOVES A MOUNTAINTOP OR A**
27 **RIDGELINE, WHETHER OR NOT THE MINED AREA WILL BE RETURNED TO ITS**
28 **ORIGINAL CONTOUR.**

29 **(2) “MOUNTAINTOP REMOVAL COAL MINING” INCLUDES**
30 **CROSS-RIDGE MINING, BOX-CUT METHOD MINING, STEEP SLOPE MINING, AREA**
31 **MINING, AND ANY METHOD OF COAL MINING THAT UTILIZES VALLEY FILLS.**

32 (L) “Neighboring” means in close proximity or in the immediate vicinity, but
33 not in actual contact.

1 [(l)] (M) “Operation” means the pit located upon a single tract of land or a
2 continuous pit embracing or extending upon two or more contiguous tracts of land.

3 [(m)] (N) “Overburden” means the strata or material overlying a mineral
4 deposit, or in between mineral deposits in its natural state, and before its removal by
5 surface mining.

6 [(n)] (O) “Permittee” means a person who holds a valid permit to conduct
7 surface mining and reclamation operations approved by the Department under §
8 15–810 of this subtitle.

9 [(o)] (P) “Person” means an individual, receiver, trustee, guardian,
10 executor, administrator, fiduciary, or representative of any kind, or any partnership,
11 firm, association, public or private corporation, or any other entity.

12 [(p)] (Q) “Pit” means the place any minerals are being mined by the surface
13 mining method.

14 [(q)] (R) “Pre-law surface mine” means a noncoal surface mine which was
15 mined and unreclaimed prior to January 1, 1977.

16 [(r)] (S) “Reclamation” means the reasonable rehabilitation of the affected
17 land for useful purposes and the protection of the natural resources of the surrounding
18 area including ponds.

19 [(s)] (T) “Refuse” means all waste soil, rock, mineral, scrap, tailings, slimes,
20 and other materials directly connected with the mining, cleaning, and preparation of
21 substances mined and includes all waste materials deposited on or in the permit area
22 from other sources.

23 [(t)] (U) “Spoil pile” means the overburden and reject materials as piled or
24 deposited in surface mining.

25 [(u)] (V) “Surface mining” means all of the following:

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

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

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

32 (4) **ANY ACTIVITY OR PROCESS CONSTITUTING MOUNTAINTOP**
33 **REMOVAL COAL MINING.**

1 [(v)] **(W)** “Tract” means a single parcel of land or two or more contiguous
2 parcels of land with common ownership.

3 [(w)] **(X)** “Unreclaimed” means land which has not been rehabilitated for
4 useful purposes or the protection of natural resources.

5 15–807.

6 (a) Except as otherwise provided in this subtitle, a person may not engage in
7 surface mining within the State without first obtaining a surface mining license.

8 (d) The Department may not issue any new surface mining license or renew
9 any existing surface mining license to any person if:

10 **(1)** [it] **IT** finds, after investigation, that the applicant has failed and
11 continues to fail to comply with any of the provisions of this subtitle; **OR**

12 **(2)** **THE METHOD OF SURFACE MINING THE APPLICANT WOULD**
13 **ENGAGE IN WOULD CONSTITUTE MOUNTAINTOP REMOVAL COAL MINING.**

14 15–810.

15 (a) The Department shall approve and grant or deny the permit requested as
16 expeditiously as possible, but not later than 30 days after the application forms or any
17 supplemental information required are filed with the Department. The Department
18 shall process the permit application concurrently with any local or county land use
19 and zoning reviews.

20 (b) The Department may deny the permit on finding that:

21 (1) Any requirement of this subtitle or any rule or regulation adopted
22 under it will be violated by the proposed operation;

23 (2) The operation will have an unduly adverse effect on wildlife or
24 fresh water, estuarine, or marine fisheries;

25 (3) The applicant has failed to provide applicable permits or approvals
26 covering the operation from all State and local regulatory agencies responsible for air
27 and water pollution and sediment control;

28 (4) The operation will constitute a substantial physical hazard to a
29 neighboring dwelling house, school, church, hospital, commercial or industrial
30 building, public road, or other public or private property in existence at the time of
31 application for the permit;

1 (5) The operation will have a significantly adverse effect on the uses of
2 a publicly owned park, forest, or recreation area in existence at the time of application
3 for the permit;

4 (6) The applicant does not possess a valid surface mining license from
5 the State;

6 (7) The applicant has not corrected all violations which he may have
7 committed under any prior permit and which resulted in:

8 (i) Revocation of his permit;

9 (ii) Termination of the operation by order of the Department;

10 (iii) Forfeiture of part or all of his bond or other security;

11 (iv) Conviction of a misdemeanor under §§ 15-807(f) and
12 15-808(k) of this subtitle; or

13 (v) Any other court order issued against the applicant as a
14 result of departmental action; or

15 (8) Previous experience with similar operations indicates a substantial
16 probability that the operation will result in substantial deposits of sediment in stream
17 beds or lakes, landslides, or other water pollution.

18 **(C) THE DEPARTMENT SHALL DENY THE PERMIT IF THE METHOD OF**
19 **SURFACE MINING WOULD CONSTITUTE MOUNTAINTOP REMOVAL COAL MINING.**

20 [(c)] **(D)** The Department may not issue the permit until the appropriate
21 county has:

22 (1) Completed its review of the proposed land use; and

23 (2) Provided the Department with a written statement that states that
24 the proposed land use conforms with all applicable county zoning and land use
25 requirements.

26 [(d)] **(E)** In the absence of any of these findings, a permit shall be granted.
27 However, no permit becomes effective until the applicant has deposited with the
28 Department an acceptable performance bond or other security pursuant to § 15-823 of
29 this subtitle.

30 [(e)] **(F)** Public notice, informational hearings, and contested case hearings
31 shall be conducted in accordance with the provisions of § 5-204 of this article.

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