

CHAPTER 480

(House Bill 1556)

AN ACT concerning

Environment – Coal Combustion By-Products – Fees

FOR the purpose of establishing in the Department of the Environment a fund for the management of certain coal combustion by-products; providing that the Fund is a special, continuing, nonlapsing fund; authorizing the Department to establish and collect a certain fee, subject to certain conditions; requiring the Department to consider certain factors in establishing and reviewing a fee; prohibiting the imposition or collection of the fee on certain coal combustion by-products used in certain manners; requiring the fee to be paid into the Fund; requiring the Department to use the Fund for certain purposes; requiring the Department annually to submit a certain report; requiring the Department to adopt certain regulations; defining certain terms; and generally relating to coal combustion by-products.

BY adding to

Article – Environment

Section 9–281 through 9–286 to be under a new part “Part VII. State Coal Combustion By-Products Management Fund”

Annotated Code of Maryland

(2007 Replacement Volume and 2008 Supplement)

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

Article – Environment

9–279. RESERVED.

9–280. RESERVED.

PART VII. STATE COAL COMBUSTION BY-PRODUCTS MANAGEMENT FUND.

9–281.

(A) IN THIS PART THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) (1) “COAL COMBUSTION BY-PRODUCTS” MEANS THE RESIDUE GENERATED BY, OR RESULTING FROM, THE BURNING OF COAL.

(2) "COAL COMBUSTION BY-PRODUCTS" INCLUDES FLY ASH, BOTTOM ASH, BOILER SLAG, POZZOLAN, AND OTHER SOLID RESIDUALS REMOVED BY AIR POLLUTION CONTROL DEVICES FROM THE FLUE GAS AND COMBUSTION CHAMBERS OF COAL-BURNING FURNACES AND BOILERS, INCLUDING FLUE GAS DESULFURIZATION SLUDGE AND OTHER SOLID RESIDUALS RECOVERED FROM FLUE GAS BY WET OR DRY METHODS.

(C) "FUND" MEANS THE STATE COAL COMBUSTION BY-PRODUCTS MANAGEMENT FUND.

(D) (1) "GENERATOR" MEANS A PERSON WHOSE OPERATIONS, ACTIVITIES, PROCESSES, OR ACTIONS CREATE COAL COMBUSTION BY-PRODUCTS.

(2) "GENERATOR" DOES NOT INCLUDE A PERSON WHO ONLY GENERATES COAL COMBUSTION BY-PRODUCTS BY BURNING COAL AT A PRIVATE RESIDENCE.

9-282.

(A) THERE IS A STATE COAL COMBUSTION BY-PRODUCTS MANAGEMENT FUND.

(B) THE FUND SHALL CONSIST OF:

(1) FEES COLLECTED BY THE DEPARTMENT UNDER § 9-283 OF THIS SUBTITLE;

(2) FUNDS APPROPRIATED BY THE GENERAL ASSEMBLY FOR DEPOSIT TO THE FUND; AND

(3) ANY ADDITIONAL MONEY MADE AVAILABLE FROM ANY SOURCES, PUBLIC OR PRIVATE, FOR THE PURPOSES FOR WHICH THE FUND HAS BEEN ESTABLISHED.

(C) (1) THE FUND IS A SPECIAL, CONTINUING, NONLAPSING FUND ~~WHICH~~ THAT IS NOT SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

(2) NOTWITHSTANDING ANY LAW TO THE CONTRARY, UNUSED MONEY IN THE FUND MAY NOT REVERT TO THE GENERAL FUND.

(D) THE FUND SHALL BE MAINTAINED AND ADMINISTERED BY THE DEPARTMENT IN ACCORDANCE WITH THE PROVISIONS OF THIS PART AND ANY REGULATIONS THE DEPARTMENT ADOPTS ~~IN ACCORDANCE WITH THIS PART.~~

9-283.

(A) ~~BY EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, BY REGULATION, THE DEPARTMENT MAY~~ SHALL ESTABLISH, ~~IMPOSE,~~ AND COLLECT A FEE TO BE PAID BY A GENERATOR OF COAL COMBUSTION BY-PRODUCTS, BASED ON A PER TON RATE OF COAL COMBUSTION BY-PRODUCTS GENERATED BY THE GENERATOR ANNUALLY.

(B) ~~BY REGULATION, THE DEPARTMENT MAY ESTABLISH AND IMPOSE A FEE IN A SINGLE AMOUNT, OR IN A RANGE OF AMOUNTS, NECESSARY TO OPERATE A REGULATORY PROGRAM TO CONTROL THE MANAGEMENT OF COAL COMBUSTION BY-PRODUCTS, BASED ON THE FACTORS IN SUBSECTION (C) OF THIS SECTION.~~

(C) ~~IN ESTABLISHING A FEE OR A RANGE OF FEES UNDER THIS SECTION, THE DEPARTMENT SHALL GIVE CONSIDERATION TO~~ THE DEPARTMENT SHALL BASE THE FEES ON THE FOLLOWING FACTORS:

(1) THE TOTAL ANNUAL TONNAGE OF COAL COMBUSTION BY-PRODUCTS THAT THE GENERATOR GENERATES;

(2) THE TYPE AND VOLUME OF COAL COMBUSTION BY-PRODUCTS GENERATED BY THE GENERATOR;

~~(2)~~ (3) WHETHER THE GENERATOR USES OR DISPOSES OF, OR INTENDS TO USE OR DISPOSE OF, THE COAL COMBUSTION BY-PRODUCTS;

~~(3)~~ (4) THE DIFFERENT TYPES OF USES OR PROPOSED USES OF THE COAL COMBUSTION BY-PRODUCTS AND WHETHER THE USES ARE CONSIDERED BENEFICIAL USES, AS DETERMINED BY THE DEPARTMENT TO THE EXTENT THAT THE COAL COMBUSTION BY-PRODUCTS ARE USED RATHER THAN DISPOSED OF, THE TYPES OF THE USES;

(5) WHETHER THE COAL COMBUSTION BY-PRODUCTS ARE TRANSPORTED FOR USE OR DISPOSAL OUT-OF-STATE; AND

~~(4)~~ (6) ANY OTHER OTHER FACTORS AS THE DEPARTMENT MAY DETERMINE CONSIDERS APPROPRIATE.

~~(D)~~ (C) THE DEPARTMENT MAY NOT ESTABLISH OR IMPOSE A FEE ON COAL COMBUSTION BY-PRODUCTS THAT ARE:

(1) BENEFICIALLY USED, ~~IN ACCORDANCE WITH REGULATIONS ADOPTED BY~~ AS THE DEPARTMENT DETERMINES; OR

(2) ~~DISPOSED OF OUTSIDE THE STATE~~ USED FOR COAL MINE RECLAMATION IN ACCORDANCE WITH REGULATIONS THE DEPARTMENT ADOPTS OR WITH REGULATIONS OF THE RECEIVING STATE.

~~(E) A GENERATOR SHALL PAY THE FEE AS ESTABLISHED BY REGULATIONS OF THE DEPARTMENT.~~

(D) FEES IMPOSED ON COAL COMBUSTION BY-PRODUCTS THAT ARE TRANSPORTED FOR USE OR DISPOSAL OUT-OF-STATE MAY NOT EXCEED 50% OF THE FEES ESTABLISHED FOR DISPOSAL IN-STATE.

~~(F)~~ (E) THE FEES COLLECTED BY THE DEPARTMENT UNDER THIS SECTION SHALL BE DEPOSITED INTO THE FUND AND USED IN ACCORDANCE WITH § 9-284 OF THIS SUBTITLE.

(F) THE FEES IMPOSED SHALL BE SET AT THE RATE NECESSARY TO IMPLEMENT THE PURPOSES SET FORTH IN § 9-284 OF THIS SUBTITLE.

(G) ~~IF~~ IN ANY FISCAL YEAR, IF THE FEE SCHEDULE ESTABLISHED BY THE DEPARTMENT GENERATES REVENUE THAT EXCEEDS THE AMOUNT NECESSARY TO OPERATE A REGULATORY PROGRAM TO CONTROL THE MANAGEMENT OF COAL COMBUSTION BY-PRODUCTS, THE DEPARTMENT SHALL REDUCE THE ~~FEE SCHEDULE ACCORDINGLY~~ FEES IN THE FOLLOWING FISCAL YEAR.

9-284.

(A) THE DEPARTMENT SHALL USE MONEY IN THE FUND:

(1) ~~TO~~ SOLELY TO ADMINISTER AND ~~MANAGE~~ DEPARTMENT IMPLEMENT PROGRAMS ~~RELATED~~ TO CONTROL THE DISPOSAL, USE, BENEFICIAL USE, RECYCLING, PROCESSING, HANDLING, STORAGE, TRANSPORT, OR OTHER REQUIREMENTS RELATED TO THE MANAGEMENT OF COAL COMBUSTION BY-PRODUCTS, INCLUDING ALL COSTS INCURRED BY THE STATE TO:

~~(2) (1) TO FUND ALL COSTS INCURRED BY THE STATE FOR REVIEWING, INSPECTING, AND EVALUATING~~ REVIEW, INSPECT, AND EVALUATE MONITORING DATA, APPLICATIONS, LICENSES, PERMITS, UTILIZATION REQUESTS, PLANS, ANALYSES, AND REPORTS ~~RELATED TO COAL COMBUSTION BY PRODUCTS;~~

~~(3) (2) FOR SITE~~ PERFORM AND OVERSEE ASSESSMENTS, INVESTIGATIONS, AND RESEARCH AND REMEDIAL ACTIVITIES ~~RELATED TO THE DISPOSAL, USE, BENEFICIAL USE, RECYCLING, PROCESSING, HANDLING, STORAGE, TRANSPORT, OR MANAGEMENT OF COAL COMBUSTION BY PRODUCTS;~~ AND

~~(4) (3) TO DEVELOP, PROPOSE, OR~~ DEVELOP, ADOPT, AND IMPLEMENT REGULATIONS, PROGRAMS, OR INITIATIVES TO ADDRESS RISKS TO HUMAN HEALTH AND THE ENVIRONMENT RELATED TO THE ~~DISPOSAL, USE, BENEFICIAL USE, RECYCLING, PROCESSING, HANDLING, STORAGE, TRANSPORT, OR~~ MANAGEMENT OF COAL COMBUSTION BY PRODUCTS.

9-285.

BEGINNING NOVEMBER 1, 2010, THE DEPARTMENT SHALL REPORT EACH YEAR TO THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, ON:

- (1) THE STATUS OF THE FUND;**
- (2) REVENUES OF AND EXPENDITURES FROM THE FUND;**
- (3) THE EFFICIENCY OF THE REGULATORY PROGRAM UNDER THIS PART;**
- (4) COMPLIANCE RATES WITHIN THE REGULATORY PROGRAM UNDER THIS PART; AND**
- (5) BASED ON THE FACTORS LISTED IN ITEMS (1) THROUGH (4) OF THIS SECTION, THE NECESSITY TO REVIEW AND ADJUST THE FEE IN ACCORDANCE WITH § 9-283(G) OF THIS SUBTITLE.**

9-286.

THE DEPARTMENT SHALL ADOPT REGULATIONS:

~~(1) TO TO CARRY OUT THIS PART, INCLUDING REGULATIONS ESTABLISHING FEES UNDER § 9-283 OF THIS SUBTITLE;~~

~~(2) ESTABLISHING PROCEDURES FOR IMPOSING AND COLLECTING THE FEES; AND~~

~~(3) GENERALLY RELATING TO THE MANAGEMENT AND ADMINISTRATION OF THE FUND IN ACCORDANCE WITH THIS PART.~~

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

Approved by the Governor, May 7, 2009.