

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1305

(Delegate King)

Environmental Matters and Economic
Matters

Education, Health, and Environmental Affairs

**Environment - Coal Combustion Byproducts - Department Regulations -
Transport and Beneficial Use**

This bill requires the Maryland Department of the Environment (MDE) to submit regulations regarding fugitive air emissions from the transportation and beneficial uses of coal combustion byproducts (CCBs) in the State to the Joint Committee on Administration, Executive, and Legislative Review by December 31, 2009. A CCB is defined as (1) fly ash; (2) bottom ash; (3) boiler slag; (4) pozzolan, as defined in the Environment Article; and (5) solid residuals removed by air pollution control devices from the flue gas and combustion chambers of coal-burning furnaces and boilers.

The bill takes effect June 1, 2009.

Fiscal Summary

State Effect: Although the bill can be implemented with existing resources, it may divert MDE staff from current responsibilities in order to meet the December deadline. Revenues are not affected.

Local Effect: None.

Small Business Effect: Potential meaningful impact on companies engaged in the business of handling, transporting, and utilizing CCBs.

Analysis

Current Law: On December 1, 2008, new regulations developed by MDE for the disposal of CCBs took effect. The regulations do not generally concern the transportation of CCBs, but do allow for certain beneficial uses. According to MDE, the new regulations generally require the following:

- disposal facilities must meet all of the same standards required for industrial solid waste landfills, including requirements on leachate (rainwater mixed with waste), collection, groundwater monitoring, the use of liners, and routine analysis of CCBs;
- as a solid waste disposal facility, a CCBs disposal facility must conform to all local zoning and land-use requirements as well as each county's 10-year solid waste management plan;
- the use of CCBs in noncoal mines must meet standards similar to those required for industrial solid waste landfills, including standards for coal mine reclamation that ensure that only alkaline CCBs are used;
- for both disposal and mine reclamation sites, dust control measures must be implemented, post-closure monitoring and maintenance must be performed, and MDE may impose other requirements as part of the permitting process for new CCBs disposal or mine reclamation sites; and
- new annual reporting requirements for generators of CCBs covering how the material was recently used or disposed, as well as future plans for disposal or use.

Background: Although these new regulations are now in effect, MDE advises that they are not yet being fully implemented due to a lack of funds. Legislation that would have funded the new effort with a fee on CCBs generated did not pass during the 2008 session. MDE also advises that the U.S. Environmental Protection Agency (EPA) has been working on regulations since 2000 to institute additional controls on the management of CCBs.

CCBs are noncombustible materials generated from burning coal. According to MDE, approximately two million tons of fly ash and bottom ash (two forms of CCBs) are currently generated each year from nine power plants 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. MDE is currently considering

regulations for the beneficial use of CCBs. According to a 2006 report by DNR, in 2004 about 49% of CCBs were placed in 1 of 20 disposal sites in Maryland.

MDE advises that, under certain geologic conditions, certain types of coal ash can produce high concentrations of potentially toxic constituents (such as arsenic, boron, cadmium, iron, lead, manganese, selenium, sulfate, and thallium) in soil that may leach into surface or groundwater. According to a 2007 report by EPA, groundwater contaminated with CCB waste poses a substantial cancer risk. In addition, MDE reports that coal ash released into the air in large quantities can create a public nuisance and/or cause respiratory problems.

If CCBs are not managed properly, constituents of the material can be released into the environment. On October 1, 2007, MDE filed a consent order in Anne Arundel County Circuit Court to settle the environmental enforcement action taken against BBSS, Inc. and Constellation Power Source Generation, Inc. for contamination of public drinking water wells in the vicinity of BBSS' Gambrills sand and gravel mine. Among other provisions, the consent order required the facility owners and operators to pay a civil penalty of \$1 million. On December 30, 2008, a Baltimore Circuit Court Judge approved a \$54 million settlement in the class-action lawsuit brought by Gambrills residents. In December 2008, one of the largest CCB spills in U.S. history occurred in Tennessee, where an estimated 5.4 million cubic yards of wet coal ash breached an earthen retaining wall.

State Fiscal Effect: MDE advises that it is currently planning to propose regulations on the beneficial use of CCBs by the end of 2009, with an expected date of final adoption in 2010. However, those regulations do not encompass transportation of CCBs. Therefore, although the bill's requirements relating to the development of beneficial use regulations conform to current MDE activities and deadlines, MDE may need to divert resources to accomplish regulatory development regarding the transportation of CCBs.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Talbot County, Baltimore City, Department of Natural Resources, Maryland Department of the Environment, Maryland Environmental Service, North East Maryland Waste Disposal Authority, Maryland Department of Transportation, Department of Legislative Services

Fiscal Note History:
mlm/ljm

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