

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 128 (Cecil County Delegation)
Environmental Matters

Environment - Disposal of Coal Combustion Byproducts - Zoning and Land Use
Requirements

This bill requires a person to have a permit issued by the Maryland Department of the Environment (MDE) before installing, materially altering, or materially extending a coal combustion byproduct disposal facility. To obtain a permit, a person must submit to MDE the complete plans and specifications of the proposed project along with any other information required by the Secretary of the Environment and pay the applicable fee. MDE may not issue a permit until it has completed a preliminary phase 1 technical review of the proposed facility and reported its findings in writing to the county's chief elected official and planning commission; the county has to report back to MDE that the facility meets all applicable county zoning and land use requirements and is in conformity with the county solid waste plan. MDE may not issue a permit for a facility to be located within critical area lands designated by the Department of Natural Resources (DNR).

A "coal combustion byproduct" (CCB) is a residue generated by the burning of coal, including fly ash, bottom ash, boiler slag, pozzolan, and other solid residuals removed by air pollution control devices.

Fiscal Summary

State Effect: Special fund expenditures at DNR may increase by an estimated \$40,000 between FY 2010 and 2014 for contractual costs associated with conducting phase 1 technical reviews as discussed below. General fund revenues may increase minimally assuming a new permit fee is established.

Local Effect: Potential minimal increase in expenditures for some local governments.

Small Business Effect: Potential minimal.

Analysis

Current Law: On December 1, 2008, new regulations developed by MDE for the disposal of CCBs took effect. 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;
- for coal and noncoal mine reclamation sites, 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.

Although these new regulations are now in effect, MDE advises that they are not yet being fully implemented due to a lack of funds. A bill that would have funded the new effort with a modest per ton fee on CCBs generated did not pass during the 2008 legislative 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.

Notably, the new CCB regulations do not prohibit the siting of disposal facilities within the Critical Area.

Background: 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, without proper controls, 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 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 Expenditures: DNR advises that, upon request from MDE, the Power Plant Research Program will assist with conducting a phase 1 technical review of landfills associated with combustion waste from utilities. DNR retains contractual engineering services in conducting each review, at an average cost of \$20,000. DNR advises that, approximately two such reviews are conducted every five years. Accordingly, assuming two phase 1 technical reviews are conducted in the five years from fiscal 2010 to fiscal 2014, DNR special fund expenditures increase by \$40,000.

Local Expenditures: The bill's requirements predominantly affect local governments as zoning authorities and as applicants for environmental permits. As noted, most of the provisions in the bill mirror regulations that recently took effect. Therefore, local governments are already beginning to incur the additional expense of the new regulatory

provisions. Because the prohibition from siting within the Critical Area is not included in those new regulations, local governments with Critical Area lands within their jurisdiction may incur additional costs to the extent that it is more expensive to site a facility outside of the Critical Area.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Montgomery County, Department of Natural Resources, Maryland Department of the Environment, Department of Legislative Services

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