

HOUSE BILL 36

M3
HB 619/18 – ENV

(PRE-FILED)

9lr0636

By: **Delegate Wivell**

Requested: October 24, 2018

Introduced and read first time: January 9, 2019

Assigned to: Environment and Transportation

A BILL ENTITLED

1 AN ACT concerning

2 **Surface Mining – Zone of Dewatering Influence – Water Supply Replacement**

3 FOR the purpose of requiring a certain surface mining permittee to permanently replace a
4 certain water supply within a certain zone of dewatering influence within a certain
5 period of time under certain circumstances; authorizing a certain surface mining
6 permittee to seek reimbursement for certain water supply replacement costs under
7 certain circumstances; providing for the construction of certain provisions of law
8 relating to a contested case hearing; making a stylistic change; correcting an obsolete
9 cross-reference; and generally relating to the zone of dewatering influence around a
10 surface mine.

11 BY repealing and reenacting, without amendments,
12 Article – Environment
13 Section 15–801(a), (e), (f), (g), (n), (p), and (u) and 15–812
14 Annotated Code of Maryland
15 (2014 Replacement Volume and 2018 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article – Environment
18 Section 15–813
19 Annotated Code of Maryland
20 (2014 Replacement Volume and 2018 Supplement)

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

23 **Article – Environment**

24 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 (e) “Department” means the Department of the Environment.
- 3 (f) “Land” means the surface of the land upon which surface mining is conducted.
- 4 (g) “Landowner” means a person who possesses legal title to the land.
- 5 (n) “Permittee” means a person who holds a valid permit to conduct surface
6 mining and reclamation operations approved by the Department under § 15–810 of this
7 subtitle.
- 8 (p) “Pit” means the place any minerals are being mined by the surface mining
9 method.
- 10 (u) “Surface mining” means all of the following:
- 11 (1) The breaking of the surface soil in order to facilitate or accomplish the
12 extraction or removal of minerals;
- 13 (2) Any activity or process constituting all or part of a process for the
14 extraction or removal of minerals from their original location; or
- 15 (3) The extraction of sand, gravel, rock, stone, earth, or fill from borrow pits
16 for highway construction purposes or other public facilities.

17 15–812.

18 (a) The General Assembly finds that in certain regions of the State dewatering of
19 surface mines located in karst terrain may significantly interfere with water supply wells
20 and may cause in some instances sudden subsidence of land, known as sinkholes.
21 Dewatering in karst terrain may result in property damage to landowners in a definable
22 zone of dewatering influence around a surface mine.

23 (b) It is the intent of the General Assembly to protect affected property owners in
24 Baltimore, Carroll, Frederick, and Washington counties where karst terrain is found by
25 directing the Department to establish zones of dewatering influence around surface mines
26 in karst terrain and to administer a program requiring permittees to mitigate or
27 compensate affected property owners in these counties.

28 15–813.

- 29 (a) (1) In this section the following words have the meanings indicated.
- 30 (2) “Dewater” or “dewatering” means to pump water out of a pit.
- 31 (3) “Karst terrain” means an irregular topography that is:

1 (i) Caused by a solution of limestone and other carbonate rock; and

2 (ii) Characterized by closed depressions, sinkholes, caverns, solution
3 cavities, and underground channels that, partially or completely, may capture surface
4 streams.

5 (4) "Lineaments" means the surface manifestation of cracks, fissures,
6 fractures, and zones of weakness that, generally, are observable on aerial photographs as
7 straight or nearly straight lines.

8 (b) (1) If a permittee is issued a water appropriation permit under § 5–502 of
9 this article to dewater a pit located in karst terrain in Baltimore, Carroll, Frederick, and
10 Washington counties, the Department shall establish, as a condition of the permittee's
11 surface mining permit under § 15–810 of this subtitle, a zone of dewatering influence
12 around the surface mine.

13 (2) The areal extent of the zone of dewatering influence shall be based, as
14 appropriate, on local topography, watersheds, aquifer limits, and other hydrogeologic
15 factors, including the occurrence of natural fractures, cracks, crevices, lineaments, igneous
16 dikes, changes in rock type, and variations in the water-bearing characteristics of
17 formations.

18 (c) (1) Within the zone of dewatering influence established under subsection
19 (b)(1) of this section, the permittee shall:

20 [(1)] (I) Replace, at no expense to the owner of real property that is
21 affected by the surface mine dewatering, a water supply that fails as a result of declining
22 ground water levels; and

23 [(2)] (II) [Upon] ON a determination by the Department of proximate
24 cause after the permittee has received proper notice and an opportunity to respond and
25 provide information, pay monetary compensation to the affected property owner or repair
26 any property damage caused as a result of the sudden subsidence of the surface of the land.

27 (2) **A PERMITTEE SHALL PERMANENTLY REPLACE A WATER SUPPLY**
28 **UNDER PARAGRAPH (1)(I) OF THIS SUBSECTION WITHIN 45 DAYS OF THE DATE ON**
29 **WHICH THE PERMITTEE KNEW OF THE WATER SUPPLY FAILURE.**

30 (d) (1) An individual domestic water supply within a zone of dewatering
31 influence that is no longer capable of yielding water because of declining water levels shall
32 be considered to be replaced adequately by a permittee if the permittee provides for the
33 affected property owner a new or retrofitted well that is capable of meeting the minimum
34 yield requirements established in regulations adopted by the Department of the
35 Environment during the period of pit dewatering.

1 (2) A municipal, industrial, commercial, institutional, or farming water
2 supply within a zone of dewatering influence that is no longer capable of yielding water
3 because of declining water levels shall be considered to be replaced adequately by a
4 permittee if the permittee provides for the affected property owner a new or retrofitted well
5 or other alternative water supply that is capable of yielding water equal to the volume used
6 or needed by the property owner before the disruption of water supply.

7 (e) (1) Real or personal property within the zone of dewatering influence in
8 karst terrain in Baltimore, Carroll, Frederick, and Washington counties found by the
9 Department to have been damaged as a result of sudden land surface subsidence shall be
10 considered to be repaired adequately by a permittee if the permittee returns the damaged
11 property to its condition before the subsidence of the surface of the land.

12 (2) If the damaged real or personal property is not capable of being restored
13 to its pre-subsidence condition, the permittee shall compensate the owner of the real or
14 personal property monetarily by the difference of the fair market value of the property as
15 the property would exist but for the sudden land subsidence, and the fair market value of
16 the property as a result of the damage.

17 (3) Notwithstanding the other provisions of this subsection, the permittee
18 and the property owner may agree on monetary compensation or other mitigation in lieu of
19 restoration.

20 (f) (1) The Department may not require a permittee to replace water supplies,
21 as provided in this section, if the permittee demonstrates to the Department by clear and
22 convincing evidence that the proximate cause of the loss of water supply is not the result of
23 pit dewatering.

24 (2) **THE PERMITTEE MAY SEEK REIMBURSEMENT FOR THE COST OF A**
25 **WATER SUPPLY REPLACEMENT FROM THE OWNER OF REAL PROPERTY THAT IS**
26 **AFFECTED BY THE SURFACE MINE DEWATERING IF AFTER THE PERMITTEE**
27 **REPLACES THE WATER SUPPLY IT IS DETERMINED THAT THE PERMITTEE'S**
28 **DEWATERING ACTIVITY IS NOT THE PROXIMATE CAUSE OF THE WATER SUPPLY**
29 **FAILURE.**

30 (g) (1) The Department shall provide opportunity for a contested case hearing
31 in accordance with [the provisions of § 5-204 of this article] **TITLE 10, SUBTITLE 2 OF**
32 **THE STATE GOVERNMENT ARTICLE.**

33 (2) **THIS SUBSECTION MAY NOT BE CONSTRUED TO WAIVE THE**
34 **REQUIREMENT TO PERMANENTLY REPLACE A WATER SUPPLY IN ACCORDANCE WITH**
35 **SUBSECTION (C)(2) OF THIS SECTION.**

36 (h) The Department shall adopt regulations to establish an administrative
37 process to expedite the resolution of water supply loss or property damage claims arising
38 under this section.

1 (i) Compensation, restoration, or mitigation provided by this section does not
2 apply to:

3 (1) Improvements that are made to real property within an established
4 zone of dewatering influence following a final decision by the Department to issue a surface
5 mining permit; or

6 (2) Improvements that are made to real property following the
7 establishment of a zone of dewatering influence as a condition of an existing surface mine
8 permit.

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2019.