

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 36

(Delegate Wivell)

Environment and Transportation

Education, Health, and Environmental Affairs

Surface Mining – Zone of Dewatering Influence – Remedies

This bill requires a surface mining permittee to permanently replace a failed water supply (that is within a zone of dewatering influence) within 45 days of learning about a specified water supply failure. The bill also codifies current regulations that (1) authorize a permittee to seek reimbursement from an affected property owner for the cost of replacing a water supply if it is determined that the permittee’s dewatering activity is not the proximate cause of the water supply failure and (2) require that a permit holder, upon discovery of a sudden subsidence of the surface of the land within the zone of dewatering influence, must immediately implement appropriate safety measures to protect public health and safety. Finally, the bill clarifies that the current law requirement for the Maryland Department of the Environment (MDE) to provide an opportunity for a contested case hearing may not be construed to stay the requirement to permanently replace a water supply or implement appropriate safety measures.

Fiscal Summary

State Effect: The bill is not expected to materially affect State operations or finances.

Local Effect: None.

Small Business Effect: Minimal, as discussed below.

Analysis

Current Law: If a surface mining permittee (quarry mine operator) is issued a water appropriation permit to dewater a pit located in karst terrain (basically limestone) in Baltimore, Carroll, Frederick, and Washington counties, MDE must establish a zone of

dewatering influence around the surface mine as a condition of the permittee's surface mining permit.

Within the zone of dewatering influence, a permittee must (1) replace a water supply that fails as a result of declining ground water levels due to surface mine dewater at no expense to the property owner and (2) upon a determination by MDE of proximate cause and after receipt of notice and an opportunity to respond and provide information, either pay monetary compensation or repair any property damage caused by the sudden subsidence of the surface of the land. MDE may not require a permittee to replace a water supply if the permittee demonstrates, by clear and convincing evidence, that the proximate cause of the loss of water supply is not the result of pit dewatering.

Regulations require that unless a permittee can demonstrate by clear and convincing evidence that surface mine dewater is not the proximate cause of the water supply loss, the permittee must (1) immediately provide a temporary water supply until a permanent replacement can be restored; (2) replace a permanent potable water supply that meets specified minimum yield requirements; (3) notify the property owner that *if* MDE determines that the permittee's dewatering activity is not the proximate cause of the water supply loss, *then* the cost of the water supply replacement is subject to reimbursement by the property owner; (4) take responsibility for providing adequate testing to verify the potability of the water supply; and (5) file, within 15 days of the completion of replacement, a report detailing the procedures taken to replace the failed water supply.

Regulations also specify that when a permittee becomes aware that a sinkhole has occurred within a zone of dewatering influence, the permittee must immediately report the occurrence to MDE and implement appropriate safety measures to protect the public.

MDE must provide opportunity for a contested case hearing. Regulations specify that a request for a contested case hearing does not stay MDE's finding of the need for a permittee to replace a water supply. Regulations also authorize a permittee to seek reimbursement for the cost of the water supply replacement from the affected property owner if MDE determines the permittee's dewatering activity is not the proximate cause of the water supply loss.

Background: According to MDE, karst terrain is an irregular topography caused by a solution of limestone and other carbonate rock. Karst terrain is characterized by closed depressions, sinkholes, caverns, solution cavities, and underground channels that may capture surface streams. Surface mine dewatering in karst terrain can interfere with nearby water supply wells.

The purpose of a zone of dewatering influence is to provide relief for a property owner within the zone who experiences a sinkhole or water supply failure. When a water supply

failure occurs, the quarry operator is presumed to be the cause of a water supply loss and must replace that water supply. When a sinkhole occurs, the quarry operator must repair any sinkhole damage within the zone unless the operator can prove that he/she did not cause the sinkhole.

MDE advises that, as of December 2018, there were 16 surface mining permits with an established zone of influence in Baltimore, Carroll, Frederick, and Washington counties. Further, MDE notes that over the last 10 years, 17 wells were replaced by permittees in accordance with relevant statutory and regulatory requirements. The majority of these wells were replaced without MDE involvement.

Small Business Effect: The bill changes the timing of the requirement for a surface mining permittee to permanently replace a failed water supply. Although some permittees permanently replace a failed water supply immediately, others merely provide a temporary replacement while the permittee attempts to show the failure was not a result of its dewatering activities or appeals a decision by MDE. Under the bill, a permittee could immediately provide a permanent replacement and then recoup the costs to replace the water supply (without having to pay for a temporary supply in the interim) upon a determination that the water supply failure was not a result of its dewatering activities. Overall, the bill is not anticipated to materially affect small businesses in the State.

Additional Information

Prior Introductions: HB 619 of 2018 passed the House with amendments and passed on second reading in the Senate, but no further action was taken.

Cross File: None.

Information Source(s): Carroll County; Judiciary (Administrative Office of the Courts); Maryland Department of the Environment; Office of Administrative Hearings; Department of Legislative Services

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Analysis by: Kathleen P. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510