



March 17, 2021

The Honorable William C. Smith, Jr., Chair
Senate Judicial Proceedings Committee
2 East, Miller Senate Office Building
Annapolis, MD 21401

Re: House Bill 399 – Real Property – Required Notices for Contracts of Sale – Zones of Dewatering Influence

Dear Chair Smith and Members of the Committee:

The Maryland Department of the Environment (MDE or the Department) has reviewed House Bill 399, entitled *Real Property – Required Notices for Contracts of Sale – Zones of Dewatering Influence*, and would like to provide some information concerning the proposed legislation.

Current law requires MDE to establish a zone of dewatering influence (ZOI) in a surface mining permit if the permittee is issued a water appropriation permit to dewater a pit in karst terrain located within Baltimore, Carroll, Frederick, or Washington Counties. Section 15-813 of the Environment Article outlines the responsibilities of a surface mining permittee when a water supply fails or sudden land subsidence (sinkhole) occurs within the established ZOI. The bill would require a vendor of real property to include a buyer notice in a contract for sale of a property located in a county with karst terrain that advises a purchaser to contact MDE to determine if the property is in a ZOI and informs the purchaser that Maryland law provides certain remedies for property impacted by dewatering. A purchaser who receives the notice on or before entering a contract would be prohibited from rescinding the contract based on the information received from the vendor. A purchaser that does not receive the information from the vendor would have the right to rescind the contract at any time before or within five days after receiving the notification, and to receive any deposits made in accordance with the contract. Lastly, the bill would require MDE to develop and publish on its website for use by the public a searchable map of ZOIs established by MDE.

In 1991, the Maryland General Assembly passed the Surface Mining Dewatering Act (Act) to protect property owners in karst terrain from certain damages caused by dewatering or the lowering of the groundwater table because of pumping groundwater out of surface mines. Prior to the Act, there were no explicit legal protections for property owners adversely affected by a surface mine permittee's dewatering activity. Section 15-813 of the Environment Article and COMAR 26.21.02 outline the requirements for a permittee with a designated ZOI and the actions that must be taken if dewatering results in a sinkhole or water supply failure. If a water supply fails because of declining groundwater levels, the permittee is required to permanently replace, at no expense to the property owner, the water supply within 45 days of becoming aware of the failure. MDE may not require a permittee to replace water supplies if the permittee demonstrates by clear and convincing evidence

Honorable William C. Smith, Jr.

Page 2

that the proximate cause of the water supply failure was not the result of dewatering activities by the permittee. Additionally, if a property is damaged because of a sinkhole, the permittee must pay monetary compensation to the affected property owner or repair any property damage upon a determination by MDE that the dewatering was the proximate cause of the sinkhole. Compensation provided under the law does not apply to improvements made to real property within the ZOI after the ZOI is established.

Many of the current ZOIs were established for surface mine permits that were active prior to the passage of the Act in 1991. While property owners within a ZOI are notified at the time the ZOI is established, those properties may have since been sold to new owners. Since the establishment of a ZOI is dependent upon certain geographical and hydrological characteristics of the area surrounding a surface mine with a karst terrain, not all real properties proximate to a surface mine are located within its ZOI. For these reasons, it may not always be obvious to a vendor or purchaser of real property that the property is located in a ZOI.

Since inclusion in a ZOI has implications for a property owner's rights in cases of water supply failure or a sinkhole, it is important for an owner or prospective purchaser of a property to be aware if the property is located within a ZOI. To increase awareness of ZOIs established in Maryland, MDE has developed a map of ZOIs that is available on the Department's website. The map is formatted as a Keyhole Markup Language (KMZ) file that can be downloaded and viewed using geographic information systems (GIS) applications, such as Google Earth, Google Maps and ArcGIS. The map shows the boundaries of a ZOI, allowing users to explore the area within and surrounding the ZOI and to zoom up to street level. The map also displays the following geographic information about a ZOI: the date the ZOI was established, the county where the ZOI is located, the surface mining and water appropriation permit numbers, the name of the surface mine, and the acreage of the ZOI.

Thank you for your consideration. We will continue to monitor House Bill 399 during the Committee's deliberations, and I am available to answer any questions you may have. Please feel free to contact me at tyler.abbott@maryland.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Tyler Abbott", written over a horizontal line.

Tyler Abbott
Director, Legislative and Intergovernmental Relations

cc: The Honorable Carol L. Krimm
Ms. Kaley Laleker, Director, Land and Materials Administration