



Sen. Scott M. Bennett

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1 AMENDMENT TO SENATE BILL 9

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 9 by replacing  
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the Coal  
5 Ash Pollution Prevention Act.

6 Section 5. Findings; intent; construction. The General  
7 Assembly finds that a clean environment is essential to the  
8 growth and well-being of this State. This Act is intended to  
9 promote clean water, clean land, and the responsible disposal  
10 and storage of coal ash. This Act shall be interpreted broadly  
11 to protect public health and prevent pollution of the  
12 environment in this State.

13 Section 10. Definitions. In this Act:

14 "Agency" means the Illinois Environmental Protection  
15 Agency.

1 "Area of environmental justice concern" mean a community  
2 defined as an environmental justice community, based on  
3 existing methodologies and findings used by the Illinois Power  
4 Agency and its Administrator in the Illinois Power Agency's  
5 Illinois Solar for All Program under Section 1-56 of the  
6 Illinois Power Agency Act.

7 "Board" means the Illinois Pollution Control Board.

8 "CCR surface impoundment" or "CCR impoundment" means a  
9 natural topographic depression, man-made excavation, quarry,  
10 or diked area that is designed, or has been used, to hold an  
11 accumulation of CCR and liquids, and treats, stores, or  
12 disposes of CCR, regardless of whether CCR continues to be  
13 added to the impoundment, and regardless of whether the power  
14 plant that generated the CCR in the impoundment continues to  
15 produce power.

16 "CCR pollutant" means any of the following: antimony,  
17 arsenic, barium, beryllium, boron, cadmium, chromium, cobalt,  
18 fluoride, lead, lithium, mercury, molybdenum, selenium,  
19 thallium, and radium 226 and 228 combined, and any other  
20 pollutant included in 40 CFR Part 257, Appendix IV.

21 "Coal combustion residuals" or "CCR" means fly ash, bottom  
22 ash, boiler slag, and flue gas desulfurization materials  
23 generated from burning coal for the purpose of generating  
24 electricity by electric utilities and independent power  
25 producers.

26 "Collateral bond" means an indemnity agreement in a sum

1 certain executed by the permittee as principal which is  
2 supported by the deposit with the regulatory authority of one  
3 or more of the following:

4 (1) a cash account, which shall be the deposit of cash  
5 in one or more federally-insured or equivalently protected  
6 accounts, payable only to the regulatory authority upon  
7 demand, or the deposit of cash directly with the regulatory  
8 authority;

9 (2) negotiable bonds of the United States, a state, or  
10 a municipality, endorsed to the order of, and placed in the  
11 possession of, the regulatory authority;

12 (3) negotiable certificates of deposit, made payable  
13 or assigned to the regulatory authority and placed in its  
14 possession or held by a federally-insured bank;

15 (4) an irrevocable letter of credit of any bank  
16 organized or authorized to transact business in the United  
17 States, payable only to the regulatory authority upon  
18 presentation; or

19 (5) other investment-grade rated securities having a  
20 rating of AAA, AA, or A, or an equivalent rating issued by  
21 a nationally recognized securities rating service,  
22 endorsed to the order of, and placed in the possession of,  
23 the regulatory authority.

24 "Impoundment with prior approval" means a CCR impoundment  
25 for which closure by leaving CCR in place has been approved for  
26 closure by the Agency before final rules adopted pursuant to

1 this Act take effect.

2 "Lined CCR surface impoundment" means any CCR Surface  
3 Impoundment with a liner meeting the specifications of 40 CFR  
4 257.71(a)(1)(ii) or 40 CFR 257.71(a)(1)(iii).

5 "Location standards" means:

6 For a CCR surface impoundment, the location restrictions  
7 set out at 40 CFR 257.60 through 40 CFR 257.64, as well as a  
8 prohibition on being located, in whole or in part, in the  
9 100-year floodplain.

10 For a CCR landfill, the location restriction for unstable  
11 areas set out at 40 CFR 257.64, as well as a prohibition on  
12 being located, in whole or in part, in the 100-year floodplain.

13 "Meaningful involvement" means:

14 (i) potentially affected populations have an  
15 appropriate opportunity to participate in decisions about  
16 a proposed activity, including rulemaking, that may affect  
17 the environment or health of the population;

18 (ii) the contributions of a population can influence  
19 the Agency's regulatory engagement and permitting  
20 decisions;

21 (iii) the concerns of all participants involved will be  
22 considered in the decision-making process; and

23 (iv) the Agency will seek out and facilitate the  
24 involvement of a population potentially affected by the  
25 Agency's regulatory engagement and permitting decisions.

26 "Operator" means the person who operates a CCR unit or part

1 of a CCR unit.

2 "Overburdened community" means a geographic location in  
3 this State that potentially experiences cumulative  
4 environmental harms, exposures, and risks disproportionately  
5 from various factors including, but not limited to, indicators  
6 identified through the United States Environmental Protection  
7 Agency's Environmental Justice Screening and Mapping Tool.

8 "Owner" means the person who owns a CCR unit or part of a  
9 CCR unit.

10 "Person" means any individual, partnership,  
11 co-partnership, firm company, limited liability company,  
12 corporation, association, joint stock company, trust, estate,  
13 political subdivision, State agency, or any other legal entity,  
14 or its legal representative, agent, or assigns.

15 "Sole Source Aquifer" means an aquifer determined by the  
16 United States Environmental Protection Agency to be a Sole  
17 Source Aquifer pursuant to subsection (e) of Section 1424 of  
18 the Safe Drinking Water Act of 1974. "Sole Source Aquifer"  
19 includes, but is not limited to, the Mahomet Aquifer.

20 "Statistically significant increase" means, for a CCR  
21 pollutant, any statistically significant increase over a  
22 groundwater protection standard as determined pursuant to 40  
23 CFR 257.93(f), (g), and (h)(1), for which a groundwater  
24 protection standard has been set by either the United States  
25 Environmental Protection Agency or under 35 Ill. Admin. Code  
26 Part 620, whichever is more restrictive.

1 "Surety bond" means an indemnity agreement in a sum certain  
2 payable to the regulatory authority, executed by the permittee  
3 as principal and that is supported by the performance guarantee  
4 of a corporation licensed to do business as a surety in the  
5 state where the operation is located.

6 "Unlined CCR surface impoundment" means any CCR surface  
7 impoundment that is not a lined CCR surface impoundment.

8 Section 15. Applicability.

9 (a) This Act applies to the owner or operator of an active  
10 and inactive CCR surface impoundment. Unless otherwise  
11 provided in this Section, the requirements also apply to a CCR  
12 surface impoundment located off-site of the electric utility or  
13 independent power producer.

14 (b) This Act does not apply to CCR placed at an active or  
15 abandoned underground or surface coal mine.

16 (c) This Act does not apply to waste, including fly ash,  
17 bottom ash, boiler slag, and flue gas desulfurization  
18 materials, generated at a facility that is not part of an  
19 electric utility or independent power producer, including a  
20 manufacturing facility, university, and hospital.

21 Section 20. Rulemaking.

22 (a) Within 180 days after the effective date of this Act,  
23 the Agency shall publish on its website draft rules  
24 implementing the requirements of this Act.

1           During the period in which the Agency is developing the  
2 draft rules, the Agency shall convene an inclusive stakeholder  
3 process and hold stakeholder meetings to seek stakeholder input  
4 on the content of the rules and ensure meaningful involvement  
5 of impacted residents. Stakeholders shall include, but are not  
6 limited to, the Illinois Commission on Environmental Justice  
7 and community members from an area of environmental justice  
8 concern within 3 miles of a CCR surface impoundment, as well as  
9 community members from an overburdened community within 3 miles  
10 of a CCR surface impoundment.

11           (b) During the period in which the Agency is developing the  
12 draft rules pursuant to subsection (a), the Agency shall  
13 establish an electronic email list of interested parties to  
14 whom it will provide public notice pursuant to this Act.  
15 Persons invited to join the email list shall include, but are  
16 not limited to, all persons participating in a stakeholder  
17 meeting.

18           On the day the Agency publishes the draft rules on its  
19 website pursuant to subsection (a), the Agency shall notify the  
20 public, by means of the email list, of the opportunity to  
21 review and comment on the draft rules. The public comment  
22 period shall commence on the date that notice is provided and  
23 shall last 30 days.

24           The Agency shall hold at least one public hearing on the  
25 draft rules during the 30-day comment period in a central  
26 location within this State that is accessible by public

1 transportation. The public hearing shall include an  
2 informational briefing on regulatory issues under  
3 consideration and an opportunity for public comment during  
4 hours accessible for working residents.

5 (c) Within 30 days after the close of the public comment  
6 period required by subsection (b), the Agency shall file its  
7 proposed rules with the Board pursuant to Section 28 of the  
8 Environmental Protective Act. The Agency shall take into  
9 account public comments and testimony from all public hearings  
10 held pursuant to subsection (b) in proposing those rules to the  
11 Board.

12 (d) Within 365 days after the Agency files its proposed  
13 rules pursuant to subsection (c), the Board shall adopt final  
14 rules reflecting the purpose of this Act and implementing the  
15 requirements of this Act.

16 Section 25. Minimal rule requirements.

17 (a) The Agency shall draft and propose, and the Board shall  
18 adopt, rules that are at least as protective as the federal  
19 rules governing a CCR surface impoundment, pursuant to 40 CFR  
20 Part 257, Subpart D.

21 (b) The Agency shall draft and propose, and the Board shall  
22 adopt, rules that are similar in substance to federal rules  
23 governing a CCR surface impoundment for the following:

- 24 (1) corrective action and selection of remedy,  
25 pursuant to 40 CFR 257.90 through 257.98;



1 (2) closure, pursuant to 40 CFR 257.100 through  
2 257.103; and

3 (3) post-closure care, pursuant to 40 CFR 257.104.

4 (c) As part of its draft proposal, the Agency shall  
5 include:

6 (1) the identification of an area of environmental  
7 justice concern and overburdened community within 3 miles  
8 of a CCR surface impoundment;

9 (2) a plan to evaluate and address potential concerns  
10 for both an area of environmental justice concern and  
11 overburdened community in the regulatory process; and

12 (3) a plan to achieve meaningful involvement of all  
13 stakeholders in both the rulemaking and permitting  
14 processes, with special attention paid to the engagement of  
15 frontline residents, minority, low-income, and indigenous  
16 populations who may face unique barriers to participating  
17 in decision-making processes.

18 (d) The Agency shall draft and propose, and the Board shall  
19 adopt, rules that require an owner or operator of a CCR surface  
20 impoundment to obtain an operating permit for the operation of  
21 a CCR surface impoundment.

22 (e) The Agency shall draft and propose, and the Board shall  
23 adopt, rules that require an owner or operator of a CCR surface  
24 impoundment to obtain a construction permit for at least the  
25 following activities at a CCR surface impoundment: corrective  
26 action, closure, and, where applicable, post-closure care. The

1 Agency may provide for a single construction permit to permit  
2 both closure and post-closure for a given CCR surface  
3 impoundment.

4 (f) The Agency shall draft and propose, and the Board shall  
5 adopt, rules that:

6 (1) Require an owner or operator of a CCR surface  
7 impoundment to obtain a modified permit for any change to a  
8 construction permit or an operating permit that is not a  
9 minor or administrative change.

10 (2) Specify when a permit modification is a significant  
11 modification triggering public notice, review, and comment  
12 pursuant to Section 30. The Agency shall specify that, at  
13 minimum: (i) changes in the method of closure of a CCR  
14 surface impoundment from removal to closure in place; (ii)  
15 changes in corrective action that are estimated to result  
16 in more time until remediation is achieved or a smaller  
17 area remediated; and (iii) decreases in the frequency of  
18 groundwater monitoring or in the number of groundwater  
19 monitoring wells are significant modifications subject to  
20 public participation requirements of Section 30.

21 (g) The Agency shall draft and propose, and the Board shall  
22 adopt, any other such rules deemed necessary to implement the  
23 requirements of this Act.

24 The Agency may draft and propose rules governing a CCR  
25 landfill, as defined under 40 CFR Part 257, that are at least  
26 as protective as the rules for a CCR landfill set forth in 40

1 CFR Part 257.

2 (h) The Agency shall draft and propose, and the Board shall  
3 adopt, rules that require an owner or operator of a CCR surface  
4 impoundment to analyze closure by removal of all CCR at a CCR  
5 surface impoundment as part of any construction permit for  
6 closure or corrective action.

7 The Agency shall draft and propose, and the Board shall  
8 adopt, rules that require an owner or operator of a CCR surface  
9 impoundment to submit a closure alternatives analysis with any  
10 application for a construction permit for closure of a CCR  
11 surface impoundment. The rules shall provide that the closure  
12 alternatives analysis shall include detailed discussion and  
13 supporting documentation addressing the following criteria for  
14 each closure method analyzed:

15 (1) overall protection of human health and environment  
16 over, at minimum, at period of 100 years starting when  
17 closure begins;

18 (2) whether the closure method will result in  
19 compliance with the groundwater quality standards set  
20 forth in 35 Ill. Admin. Code. Part 620, and if so, how  
21 quickly, and what concentrations of a CCR pollutant will  
22 result from the closure method;

23 (3) if the closure method involves leaving CCR in  
24 place, whether the closure method will meet the federal  
25 performance standards for closure when leaving CCR in  
26 place, set forth in 40 CFR 257.102(d);

1           (4) the long-term effectiveness and permanence of the  
2 closure method;

3           (5) the reduction of toxicity, mobility, or volume of  
4 toxins that the closure method will achieve;

5           (6) the short-term effectiveness of the closure  
6 method;

7           (7) the implementability of the closure method; and

8           (8) if the CCR surface impoundment for which the  
9 construction permit is sought is located in or adjacent to  
10 an area of environmental justice concern or overburdened  
11 community, the potential impact of the closure method on  
12 the area of environmental justice concern or overburdened  
13 community, taking into consideration the cumulative  
14 environmental burdens on the area of environmental justice  
15 concern or overburdened community.

16           The Agency shall not approve a construction permit for  
17 closure, other than closure by removal of all CCR, unless the  
18 closure alternatives analysis demonstrates, by the following  
19 threshold criteria, that the alternative to closure by removal:

20           (i) is at least as protective of human health and environment,  
21 with consideration of the cumulative environmental burdens in  
22 an area of environmental justice concern and overburdened  
23 community, as removal, evaluated over, at minimum, a period of  
24 100 years; (ii) will meet the groundwater quality standards set  
25 forth in 35 Ill. Admin. Code. Part 620, and will reduce the  
26 concentrations of a CCR pollutant in groundwater as much as

1 removal; and (iii) will meet the federal performance standards  
2 for closure when leaving CCR in place set forth in 40 CFR  
3 257.102(d).

4 When more than one closure method meets the threshold  
5 criteria, the Agency shall compare the closure methods by  
6 evaluating the following primary balancing criteria for each  
7 closure method that meets the following threshold criteria:  
8 long-term effectiveness and permanence; reduction of toxicity,  
9 mobility, or volume; and short-term effectiveness.

10 If the closure methods are not equally balanced under the  
11 primary balancing criteria, the Agency shall identify the  
12 closure method that outweighs the remaining closure methods  
13 under the primary balancing criteria, and shall require that  
14 closure method in the construction permit.

15 If the closure methods are equally balanced under the  
16 primary balancing criteria, the Agency shall compare the  
17 closure methods and identify an approved closure method which  
18 it shall require in the construction permit, by evaluating the  
19 implementability and community acceptance including, but not  
20 limited to, local consideration of future site reuse  
21 opportunities.

22 (i) An owner or operator of an impoundment with prior  
23 approval is not required to file with the Agency a closure  
24 alternatives analysis pursuant to subsection (g).

25 Within 60 days of the adoption of the rules required by  
26 this Act, an owner or operator of an impoundment with prior

1 approval shall provide sufficient information to the Agency to  
2 allow the Agency to determine whether the approved closure  
3 method for the CCR surface impoundment meets the federal  
4 performance standards for closure by leaving CCR in place under  
5 40 CFR 257.102(d).

6 Within 30 days of receiving the information required for  
7 the Agency to approve a construction permit for closure  
8 pursuant to subsection (h), the Agency shall post that  
9 information on its website, provide public notice, via the  
10 email list specified in subsection (b) of Section 20, of the  
11 opportunity for comment, and open a 30-day comment period on  
12 that information.

13 Following the close of the public comment period, the  
14 Agency shall determine whether the approved closure method for  
15 an impoundment with prior approval meets the federal  
16 performance standards for closure by leaving CCR in place under  
17 40 CFR 257.102(d). In making that determination, the Agency  
18 shall take into account the information provided to the Agency  
19 to approve a construction permit for closure pursuant to  
20 subsection (h), by the owner or operator of the impoundment  
21 with prior approval, as well as all comments received during  
22 the public comment period on that information.

23 (j) The Agency shall draft and propose, and the Board shall  
24 adopt, rules that:

- 25 (1) Classify a CCR surface impoundment as high-risk,  
26 medium-risk, or low-risk, based on factors that include,

1 but are not limited to, whether the surface impoundment  
2 poses an imminent threat to human health and the  
3 environment, is open to the atmosphere, has an exceedance  
4 of the groundwater quality standards, or has an unapproved  
5 cover. The Agency shall not consider whether a CCR surface  
6 impoundment is active or inactive in determining its risk  
7 classification.

8 (2) Identify a CCR surface impoundment that is in, or  
9 within 3 miles of, either an area of environmental justice  
10 concern or an overburdened community.

11 Except for the impoundments addressed in subsection (h) of  
12 this Section, an owner or operator of a CCR surface impoundment  
13 shall submit an application for a construction permit for  
14 closure to the Agency within 3 months of the effective date of  
15 the rules adopted pursuant to this Act.

16 The Agency shall draft and propose, and the Board shall  
17 adopt, rules setting deadlines for the Agency to issue a  
18 construction permit for closure of a CCR surface impoundment  
19 that is an unlined CCR surface impoundment or that fails to  
20 meet the location standards. The Agency shall determine the  
21 earliest feasible deadline for issuance of a closure permit for  
22 the CCR impoundment, taking into account the need to comply  
23 with this Act and the high-risk CCR surface impoundment and a  
24 CCR surface impoundment that is located in, or within 3 miles  
25 of, an area of environmental justice concern or overburdened  
26 community.

1           The Agency shall prioritize issuance of a construction  
2 permit for closure of a high-risk CCR surface impoundment and  
3 CCR surface impoundment that is located in, or within 3 miles  
4 of, an area of environmental justice concern and overburdened  
5 community. The Agency may specify later deadlines for issuance  
6 of a construction permit for closure for a CCR surface  
7 impoundment classified as medium-risk or low-risk.

8           A construction permit for closure shall require a CCR  
9 surface impoundment that is an unlined CCR surface impoundment,  
10 or that fails to meet the location standards for a CCR surface  
11 impoundment, to commence closure within 30 days of the issuance  
12 of the permit unless closure is enjoined by the Board or a  
13 court of law.

14           (k) The Agency shall draft and propose, and the Board shall  
15 adopt, rules that require an owner or operator of a CCR surface  
16 impoundment to provide financial assurances covering closure,  
17 any required post-closure, and corrective action.

18           The Agency shall draft and propose, and the Board shall  
19 adopt, rules requiring an owner or operator of a CCR surface  
20 impoundment to periodically submit revised cost estimates  
21 underpinning financial assurances and to require an owner or  
22 operator of a CCR surface impoundment to update financial  
23 assurances accordingly.

24           Financial assurances shall only take the form of a surety  
25 bond or collateral bond.

26           Self-bonding is not permitted.



1           (1) The Agency shall draft and propose, and the Board shall  
2 adopt, rules that require an owner or operator of a CCR surface  
3 impoundment that closes by removal to protect against pollution  
4 and harm from removal of CCR. The rules shall set out measures  
5 permittees shall take to: (i) protect CCR removal and transport  
6 workers, as well as communities through which CCR is  
7 transported, from CCR dust pollution and other dust pollution;  
8 and (ii) protect against pollution of any adjacent surface  
9 waters and groundwater while removal is taking place.

10           The Agency shall draft and propose, and the Board shall  
11 adopt, rules limiting where CCR removed from a CCR surface  
12 impoundment may be disposed. The rules shall prohibit the  
13 disposal of removed CCR in: (i) any CCR surface impoundment  
14 that is unlined, fails to meet any location standard for a CCR  
15 surface impoundment, or where a statistically significant  
16 increase in a CCR pollutant is found; and (ii) any landfill  
17 that is located over a Sole Source Aquifer, that does not meet  
18 the requirements of 35 Ill. Adm. Code Part 811 Subpart C, or  
19 that fails to meet the location standards for a CCR landfill.

20           (m) Any alternative source demonstration conducted  
21 pursuant to federal requirements, this Act, or this Act's  
22 implementing rules is required to identify the specific  
23 alternative source with sufficient particularity. If the owner  
24 or operator of the CCR unit fails to do so, it shall be deemed  
25 to have not met its burden of establishing an alternative  
26 source of CCR pollutants.

1 Section 30. Public participation.

2 (a) The Agency shall facilitate a robust public  
3 participation process, accessible to all residents of this  
4 State, especially residents in areas of environmental justice  
5 concern and overburdened communities, to provide transparency  
6 and meaningful involvement in decision-making in issuing a  
7 final operating permit and construction permit. The public  
8 participation process shall include:

9 (1) Public notice.

10 (A) The Agency shall draft and propose, and the  
11 Board shall approve, rules specifying the mechanisms  
12 by which the public will be notified of applications  
13 for an operating permit and construction permit under  
14 this Act, a draft operating permit and draft  
15 construction permit the Agency proposes to issue under  
16 this Act, and a final operating permit and final  
17 construction permit issued under this Act.

18 (B) Public notice of an operating permit and  
19 construction permit application and draft permit shall  
20 include, at minimum, notice to the email list specified  
21 in subsection (b) of Section 20 and publication in a  
22 newspaper circulating in the community in which the CCR  
23 surface impoundment for which the permit is sought is  
24 located.

25 (C) The public notice shall include, at minimum,

1 the website and physical location at which the permit  
2 application materials, draft permit, or final permit  
3 are available for review, as well as instructions for  
4 signing up for the email list specified in subsection  
5 (b) of Section 20. For a draft permit, the notice shall  
6 also include the deadline for submission of public  
7 comments, instructions for submitting such comments,  
8 and instructions for requesting a public hearing on the  
9 draft permit.

10 (2) Public comment. The Agency shall provide a public  
11 comment period of at least 45 days on all draft operating  
12 and construction permits. The Agency shall accept and  
13 review all comments timely submitted electronically or in  
14 hard copy.

15 (3) Public hearings.

16 (A) Any member of the public may request a public  
17 hearing on a draft operating or construction permit  
18 under this Act. If any such request is received by the  
19 Agency, the Agency shall hold a public hearing on that  
20 draft permit.

21 (B) If a public hearing is requested, the Agency  
22 shall provide notice of the public hearing at least 10  
23 days in advance of the hearing. Notice shall be  
24 provided to the email list specified in subsection (b)  
25 of Section 20 and by publication in a newspaper  
26 circulating in the community in which the CCR surface

1           impoundment for which the permit is sought is located.  
2           The notice shall include the date, time, and location  
3           of the hearing; the name and contact information of an  
4           Agency staff person to contact for questions; and  
5           instructions on how to sign up to testify at the  
6           hearing.

7           (C) Public hearings shall be held during evening or  
8           weekend hours to facilitate attendance, and shall be  
9           held in accessible locations in the county in which the  
10          CCR surface impoundment for which the permit is sought  
11          is located. The hearing shall be scheduled for no fewer  
12          than 2 hours, although the Agency may end the hearing  
13          after one hour if all persons who signed up to testify  
14          have already done so.

15          (D) All persons who sign up to testify at the  
16          public hearing shall be allowed to testify if the  
17          person attends the hearing. The Agency shall also have  
18          a form to sign up to testify available at the hearing.

19          The Agency shall provide enhanced participation procedures  
20          for a permit concerning a CCR surface impoundment located in,  
21          or within 3 miles of, an area of environmental justice concern  
22          and overburdened community. The procedures shall include, but  
23          are not limited to, preparation and distribution of written  
24          materials about the permit at issue in Spanish or other  
25          languages commonly spoken in the community where the CCR  
26          surface impoundment is located; at least one public meeting to

1 inform the community about the permit and potential  
2 environmental impacts associated with it; and a guaranteed  
3 public hearing.

4 (b) Prior to issuing any permit under this Act, the Agency  
5 shall review and consider all public comments and all testimony  
6 from any public hearing on the permit in determining whether  
7 the applicant has met applicable standards for the permit it  
8 seeks.

9 (c) At the time of issuance of the final construction or  
10 operating permit, the Agency shall provide a responsiveness  
11 summary that responds to all substantive issues raised in  
12 public comments and public hearings.

13 Section 35. Permit appeals.

14 (a) If the Agency grants, with conditions, a construction  
15 or operating permit under this Act and its implementing rules,  
16 the permit applicant may petition the Board for review of the  
17 permitting decision. The Board shall hear the petition in  
18 accordance with the terms of subsection (a) of Section 40 of  
19 the Environmental Protection Act and its procedural rules  
20 governing denial appeals. The hearing shall be based  
21 exclusively on the record before the Agency.

22 (b) If the Agency grants, or grants with conditions, a  
23 construction permit pursuant to this Act and its implementing  
24 rules, a person who has submitted public comment or testified  
25 in a public hearing on the permit, other than the permit

1 applicant or Agency, may, within 35 days after the date on  
2 which the Agency issued its decision, petition the Board for a  
3 hearing to contest the issuance or terms of the permit.

4 (1) Unless the Board determines that such petition is  
5 duplicative or frivolous, or that the petitioner has not  
6 shown that he or she may be affected by the permitted CCR  
7 surface impoundment, the Board shall hear the petition in  
8 accordance with the terms of paragraph (1) of subsection  
9 (a) of Section 40 of the Environmental Protection Act and  
10 its procedural rules governing appeals. The hearing shall  
11 be based exclusively on the record before the Agency.

12 (2) The burden of proof shall be on the petitioner.

13 (3) The Agency and the permit applicant shall be named  
14 co-respondents.

15 (4) If there is no final action by the Board within 120  
16 days after the date on which it received the petition, the  
17 petitioner shall be entitled to an Appellate Court order  
18 pursuant to subsection (d) of Section 41 of the  
19 Environmental Protection Act.

20 Section 40. Fees. The owner or operator of a CCR surface  
21 impoundment shall pay fees to the Agency as follows:

22 (1) A one-time fee of:

23 \$50,000 for a closed CCR surface impoundment; or

24 \$75,000 for a CCR surface impoundment that has not  
25 completed closure.

1           (2) An annual operating permit fee of \$30,000 until  
2           completion of closure and post-closure.

3           Section 45. Reporting requirements for beneficial use. All  
4           utilities and independent power producers that generate CCR and  
5           sell or otherwise provide coal combustion byproducts pursuant  
6           to Section 3.135 of the Environmental Protection Act shall,  
7           every 6 months, file with the Agency a report specifying:

8           (1) the volume or weight of CCR, in cubic yards or tons,  
9           that it sold or provided during the past 6 months for each  
10          different allowable type of use under Section 3.135 of the  
11          Environmental Protection Act, specifying the volume or weight  
12          for each use and, if known, the region of this State where that  
13          CCR is being used; and

14          (2) the volume or weight of CCR, in cubic yards or tons,  
15          that it expects to sell or provide in the next 6 months for  
16          each different allowable type of use under Section 3.135 of the  
17          Environmental Protection Act, specifying the volume or weight  
18          for each use and, if known, the region of this State where that  
19          CCR will be used.

20          Section 99. Effective date. This Act takes effect upon  
21          becoming law."