

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Environmental Protection Act is amended by  
5 changing Section 22.59 as follows:

6 (415 ILCS 5/22.59)

7 Sec. 22.59. CCR surface impoundments.

8 (a) The General Assembly finds that:

9 (1) the State of Illinois has a long-standing policy to  
10 restore, protect, and enhance the environment, including  
11 the purity of the air, land, and waters, including  
12 groundwaters, of this State;

13 (2) a clean environment is essential to the growth and  
14 well-being of this State;

15 (3) CCR generated by the electric generating industry  
16 has caused groundwater contamination and other forms of  
17 pollution at active and inactive plants throughout this  
18 State;

19 (4) poorly constructed and inadequately maintained CCR  
20 surface impoundments have contributed to environmental  
21 disasters outside of Illinois;

22 (5) the health effects of exposure to CCR have become  
23 the subject of a number of studies;

1           (6) ~~(4)~~ environmental laws should be supplemented to  
2 ensure consistent, responsible regulation of all existing  
3 CCR surface impoundments; and

4           (7) ~~(5)~~ meaningful participation of State residents,  
5 especially vulnerable populations who may be affected by  
6 regulatory actions, is critical to ensure that  
7 environmental justice considerations are incorporated in  
8 the development of, decision-making related to, and  
9 implementation of environmental laws and rulemaking that  
10 protects and improves the well-being of communities in this  
11 State that bear disproportionate burdens imposed by  
12 environmental pollution.

13           Therefore, the purpose of this Section is to promote a  
14 healthful environment, including clean water, air, and land,  
15 meaningful public involvement, and the responsible disposal  
16 and storage of coal combustion residuals, so as to protect  
17 public health and to prevent pollution of the environment of  
18 this State.

19           The provisions of this Section shall be liberally construed  
20 to carry out the purposes of this Section.

21           (b) No person shall:

22           (1) Cause, threaten, ~~cause~~ or allow the release  
23 ~~discharge~~ of any contaminants from a CCR ~~surface~~  
24 ~~impoundment~~ into the environment so as to cause air, water,  
25 or other pollution in Illinois, either alone or in  
26 combination with contaminants from other sources, or so as

1 ~~to violate, directly or indirectly, a violation of this Act~~  
2 ~~Section or any regulations or standards adopted by the~~  
3 ~~Board under this Act. Section, either alone or in~~  
4 ~~combination with contaminants from other sources;~~

5 (2) Construct ~~construct~~, install, modify, operate, or  
6 close any CCR surface impoundment without a permit granted  
7 by the Agency, or so as to violate any conditions imposed  
8 by such permit, any provision of this Act ~~Section~~ or any  
9 regulations or standards adopted by the Board under this  
10 Act. ~~Section; or~~

11 (3) (Blank). ~~cause or allow, directly or indirectly,~~  
12 ~~the discharge, deposit, injection, dumping, spilling,~~  
13 ~~leaking, or placing of any CCR upon the land in a place and~~  
14 ~~manner so as to cause or tend to cause a violation this~~  
15 ~~Section or any regulations or standards adopted by the~~  
16 ~~Board under this Section.~~

17 (c) For purposes of this Section, a permit issued by the  
18 Administrator of the United States Environmental Protection  
19 Agency under Section 4005 of the federal Resource Conservation  
20 and Recovery Act, shall be deemed to be a permit under this  
21 Section and subsection (y) of Section 39.

22 (d) Before commencing closure of a CCR surface impoundment,  
23 in accordance with Board rules, the owner of a CCR surface  
24 impoundment must submit to the Agency for approval a closure  
25 alternatives analysis that analyzes all closure methods being  
26 considered and that otherwise satisfies all closure

1 requirements adopted by the Board under this Act. Complete  
2 removal of CCR, as specified by the Board's rules, from the CCR  
3 surface impoundment must be considered and analyzed. Removal,  
4 as that term is defined in Section 3.405 of this Act, does not  
5 apply to the Board's rules specifying complete removal of CCR.  
6 The selected closure method must ensure compliance with  
7 regulations adopted by the Board pursuant to this Section.

8 (e) Owners or operators of CCR surface impoundments who  
9 have submitted a closure plan to the Agency before May 1, 2019,  
10 and who have completed closure prior to 24 months after July  
11 30, 2019 (the effective date of Public Act 101-171) ~~this~~  
12 ~~amendatory Act of the 101st General Assembly~~ shall not be  
13 required to obtain a construction permit for the surface  
14 impoundment closure under this Section.

15 (f) Except for the State, its agencies and institutions, a  
16 unit of local government, or not-for-profit electric  
17 cooperative as defined in Section 3.4 of the Electric Supplier  
18 Act, any person who owns or operates a CCR surface impoundment  
19 in this State shall post with the Agency a performance bond or  
20 other security for the purpose of: (i) ensuring closure of the  
21 CCR surface impoundment and post-closure care in accordance  
22 with this Act and its rules; and (ii) ensuring ~~insuring~~  
23 remediation of releases from the CCR surface impoundment. The  
24 only acceptable forms of financial assurance are: a trust fund,  
25 a surety bond guaranteeing payment, a surety bond guaranteeing  
26 performance, ~~or~~ an irrevocable letter of credit, or insurance

1 that is not self-insurance.

2 (1) The cost estimate for the post-closure care of a  
3 CCR surface impoundment shall be calculated using a 30-year  
4 post-closure care period or such longer period as may be  
5 approved by the Agency under Board or federal rules.

6 (2) The Agency is authorized to enter into such  
7 contracts and agreements as it may deem necessary to carry  
8 out the purposes of this Section. Neither the State, nor  
9 the Director, nor any State employee shall be liable for  
10 any damages or injuries arising out of or resulting from  
11 any action taken under this Section.

12 (3) The Agency shall have the authority to approve or  
13 disapprove any performance bond or other security posted  
14 under this subsection. Any person whose performance bond or  
15 other security is disapproved by the Agency may contest the  
16 disapproval as a permit denial appeal pursuant to Section  
17 40.

18 (4) If insurance is used as financial assurance it must  
19 meet the following criteria:

20 (A) Insurance may only be used as financial  
21 assurance if it is accompanied by:

22 (i) a surety bond or irrevocable letter of  
23 credit covering the value of the total cost of  
24 premiums over the life of the insurance policy,  
25 plus 50% of that total cost; and

26 (ii) proof of a trust fund that shall receive

1           any forfeited funds from the surety bond or  
2           irrevocable letter of credit under subdivision (i)  
3           of this subparagraph (A) if the owner or operator  
4           fails to pay insurance premiums.

5           (B) The life of the policy shall be the duration of  
6           the closure and post-closure period, as well as any  
7           period of remediation of release.

8           (C) The policy shall provide that insurance  
9           premiums shall be paid no less than 2 years in advance  
10           of the due date for that premium, except that the first  
11           2 years of premiums shall be paid in bulk as a single  
12           payment upon issuance of the policy. The owner or  
13           operator of the CCR surface impoundment or the  
14           third-party payer shall submit to the Agency proof of  
15           payment of each premium within 2 weeks after making  
16           payment.

17           (D) The face value amount of the policy for which  
18           insurance is serving as financial assurance shall be at  
19           least equal to all of the following that apply:

20                   (i) the cost estimate for closure, if used as  
21                   financial assurance for closure;

22                   (ii) the cost estimate for post-closure, if  
23                   used as financial assurance for post-closure; or

24                   (iii) the cost estimate for remediation of  
25                   releases, if used as financial assurance for  
26                   remediation of releases.

1           When remediation of a release is required, within  
2           60 days after the Agency's approval of the cost  
3           estimate for that remediation, the policy shall be  
4           amended to cover that approved cost estimate or the  
5           owner or operator of the CCR surface impoundment shall  
6           obtain a separate policy covering the amount of the  
7           approved cost estimate.

8           (E) The face value of the policy shall be updated  
9           within 90 days after the Agency approves a revised cost  
10          estimate. Cost estimates shall be updated:

11                   (i) at least annually;

12                   (ii) whenever there is a significant  
13                   modification to an approved plan for closure,  
14                   post-closure, or remediation of releases; and

15                   (iii) upon request by the Agency.

16           (F) The policy shall guarantee that,  
17          notwithstanding litigation:

18                   (i) funds will be available without delay to  
19                   close, if used as financial assurance for closure;

20                   (ii) funds will be available without delay to  
21                   perform any required post-closure care, if used as  
22                   financial assurance for post-closure; and

23                   (iii) funds will be available without delay  
24                   for remediation of releases, if used as financial  
25                   assurance for remediation of releases.

26           (G) For insurance used as financial assurance for

1       closure, the policy shall guarantee that once closure  
2       begins the insurer will be responsible for payout of  
3       funds up to an amount equal to the face amount of the  
4       policy, upon the direction of the Agency, to the party  
5       or parties the Agency specifies.

6           (H) The policy shall provide that payment of  
7       insurance premiums may be made by the insured or by any  
8       third party, including, but not limited to, the trustee  
9       of the trust fund specified under subdivision (ii) of  
10       subparagraph (A) of this paragraph (4).

11           (I) The policy must not be terminated, canceled, or  
12       suspended for any reason other than failure to pay a  
13       premium.

14           (J) If nonpayment of premiums by the owner or  
15       operator of the CCR surface impoundment risks  
16       terminating, cancelling, or suspending the policy, the  
17       insurer shall provide notice by certified mail to the  
18       owner or operator, the trustee of the trust fund  
19       specified under subdivision (ii) of subparagraph (A)  
20       of this paragraph (4), and the Agency. Termination,  
21       cancellation, or suspension shall not occur within 120  
22       days after the date of receipt of the notice by the  
23       owner or operator and the Agency, as evidenced by  
24       return receipts.

25           (K) If nonpayment of premiums by the owner or  
26       operator of the CCR surface impoundment risks



1 terminating, cancelling, or suspending the policy, and  
2 after notice has been provided under subparagraph (J),  
3 within 100 days of receiving that notice, the owner or  
4 operator shall acquire an acceptable substitute form  
5 of financial assurance at least equal to the face value  
6 of the policy. If the owner or operator fails to  
7 acquire an acceptable substitute form of financial  
8 assurance within the 100-day period, the surety bond or  
9 irrevocable letter of credit specified under  
10 subdivision (i) of subparagraph (A) of this paragraph  
11 (4) shall be forfeited and the funds shall be directed  
12 without delay, and in any event not more than 10 days  
13 after the 100-day period, into the trust fund specified  
14 under subdivision (ii) of subparagraph (A) of this  
15 paragraph (4). Within 10 days of receipt of those funds  
16 in the trust fund, the trustee of the fund shall use  
17 the monies in the trust fund to pay any premiums that  
18 are due or past due. Using the funds in the trust fund,  
19 the trustee shall continue to pay the remaining  
20 premiums for the life of the policy.

21 (L) The Board's rules required under subsection  
22 (g) of this Section shall address, among other things,  
23 how to ensure continued payment of premiums if the  
24 trustee of the trust fund specified under subdivision  
25 (ii) of subparagraph (A) of this paragraph (4) fails to  
26 make timely payment of premiums.

1           (M) The insurer shall be licensed to conduct  
2           business in Illinois and have at least an "A-" rating,  
3           or its equivalent, from a recognized rating agency.

4           (N) In the event of a transfer of ownership of the  
5           CCR surface impoundment, the policy shall contain a  
6           provision requiring continued payment of premiums by  
7           the insured at least until any successor owner or  
8           operator of the CCR surface impoundment obtains, and  
9           the Agency approves, acceptable substitute financial  
10           assurance with a value of, at a minimum, the face value  
11           of the policy.

12           Failure to pay the premium, without substitution of  
13           alternative financial assurance at least equal to face  
14           value of the policy within the time period specified in  
15           subparagraph (K), shall constitute a violation of this Act.

16           (g) The Board shall adopt rules establishing construction  
17 permit requirements, operating permit requirements, design  
18 standards, reporting, financial assurance, and closure and  
19 post-closure care requirements for CCR surface impoundments.  
20 Not later than 8 months after July 30, 2019 (the effective date  
21 of Public Act 101-171) ~~this amendatory Act of the 101st General~~  
22 ~~Assembly~~ the Agency shall propose, and not later than one year  
23 after receipt of the Agency's proposal the Board shall adopt,  
24 rules under this Section. The rules must, at a minimum:

25           (1) be at least as protective and comprehensive as the  
26           federal regulations or amendments thereto promulgated by

1 the Administrator of the United States Environmental  
2 Protection Agency in Subpart D of 40 CFR 257 governing CCR  
3 surface impoundments;

4 (2) specify the minimum contents of CCR surface  
5 impoundment construction and operating permit  
6 applications, including the closure alternatives analysis  
7 required under subsection (d);

8 (3) specify which types of permits include  
9 requirements for closure, post-closure, remediation and  
10 all other requirements applicable to CCR surface  
11 impoundments;

12 (4) specify when permit applications for existing CCR  
13 surface impoundments must be submitted, taking into  
14 consideration whether the CCR surface impoundment must  
15 close under the RCRA;

16 (5) specify standards for review and approval by the  
17 Agency of CCR surface impoundment permit applications;

18 (6) specify meaningful public participation procedures  
19 for the issuance of CCR surface impoundment construction  
20 and operating permits, including, but not limited to,  
21 public notice of the submission of permit applications, an  
22 opportunity for the submission of public comments, an  
23 opportunity for a public hearing prior to permit issuance,  
24 and a summary and response of the comments prepared by the  
25 Agency;

26 (7) prescribe the type and amount of the performance

1 bonds or other securities required under subsection (f),  
2 and the conditions under which the State is entitled to  
3 collect moneys from such performance bonds or other  
4 securities;

5 (8) specify a procedure to identify areas of  
6 environmental justice concern in relation to CCR surface  
7 impoundments;

8 (9) specify a method to prioritize CCR surface  
9 impoundments required to close under RCRA if not otherwise  
10 specified by the United States Environmental Protection  
11 Agency, so that the CCR surface impoundments with the  
12 highest risk to public health and the environment, and  
13 areas of environmental justice concern are given first  
14 priority;

15 (10) define when complete removal of CCR is achieved  
16 and specify the standards for responsible removal of CCR  
17 from CCR surface impoundments, including, but not limited  
18 to, dust controls and the protection of adjacent surface  
19 water and groundwater; and

20 (11) describe the process and standards for  
21 identifying a specific alternative source of groundwater  
22 pollution when the owner or operator of the CCR surface  
23 impoundment believes that groundwater contamination on the  
24 site is not from the CCR surface impoundment.

25 (12) Specify that an owner or operator of a CCR surface  
26 impoundment shall certify to the Agency that all

1 contractors, subcontractors, and installers utilized to  
2 construct, install, modify, or close a CCR surface  
3 impoundment in accordance with a permit issued under this  
4 Act are participants in:

5 (i) a training program that is approved by and  
6 registered with the United States Department of  
7 Labor's Employment and Training Administration and  
8 that includes instruction in erosion control and  
9 environmental remediation, including, but not limited  
10 to, a 40-hour hazardous waste worker training course  
11 and a hazardous waste supervisor training course as  
12 prescribed under 29 C.F.R. 1926.65; and

13 (ii) a training program that is approved by and  
14 registered with the United States Department of  
15 Labor's Employment and Training Administration and  
16 that includes instruction in the operation of heavy  
17 equipment and excavation.

18 For purposes of this Section, "contractors,  
19 subcontractors, and installers" shall not apply to  
20 construction-related professional services.  
21 "Construction-related professional services" includes, but is  
22 not limited to, those services within the scope of: the  
23 practice of architecture as defined in Section 4 of the  
24 Illinois Architecture Practice Act of 1989; professional  
25 engineering as defined in Section 4 of the Professional  
26 Engineering Practice Act of 1989; the practice of a structural

1 engineer under the Structural Engineering Practice Act of 1989;  
2 or land surveying under the Illinois Professional Land Surveyor  
3 Act of 1989.

4 (h) Any owner of a CCR surface impoundment that generates  
5 CCR and sells or otherwise provides coal combustion byproducts  
6 pursuant to Section 3.135 of this Act shall, every 12 months,  
7 post on its publicly available website a report specifying the  
8 volume or weight of CCR, in cubic yards or tons, that it sold  
9 or provided during the past 12 months.

10 (i) The owner of a CCR surface impoundment shall post all  
11 closure plans, permit applications, and supporting  
12 documentation, as well as any Agency approval of the plans or  
13 applications on its publicly available website.

14 (j) The owner or operator of a CCR surface impoundment  
15 shall pay the following fees:

16 (1) An initial fee to the Agency within 6 months after  
17 July 30, 2019 (the effective date of Public Act 101-171)  
18 ~~this amendatory Act of the 101st General Assembly~~ of:

19 \$50,000 for each closed CCR surface impoundment;

20 and

21 \$75,000 for each CCR surface impoundment that have  
22 not completed closure.

23 (2) Annual fees to the Agency, beginning on July 1,  
24 2020, of:

25 \$25,000 for each CCR surface impoundment that has  
26 not completed closure; and

1           \$15,000 for each CCR surface impoundment that has  
2           completed closure, but has not completed post-closure  
3           care.

4           (k) All fees collected by the Agency under subsection (j)  
5           shall be deposited into the Environmental Protection Permit and  
6           Inspection Fund.

7           (l) The Coal Combustion Residual Surface Impoundment  
8           Financial Assurance Fund is created as a special fund in the  
9           State treasury. Any moneys forfeited to the State of Illinois  
10          from any performance bond or other security required under this  
11          Section shall be placed in the Coal Combustion Residual Surface  
12          Impoundment Financial Assurance Fund and shall, upon approval  
13          by the Governor and the Director, be used by the Agency for the  
14          purposes for which such performance bond or other security was  
15          issued. The Coal Combustion Residual Surface Impoundment  
16          Financial Assurance Fund is not subject to the provisions of  
17          subsection (c) of Section 5 of the State Finance Act.

18          (m) The provisions of this Section shall apply, without  
19          limitation, to all existing CCR surface impoundments and any  
20          CCR surface impoundments constructed after July 30, 2019 (the  
21          effective date of Public Act 101-171) ~~this amendatory Act of~~  
22          ~~the 101st General Assembly~~, except to the extent prohibited by  
23          the Illinois or United States Constitutions.

24          (Source: P.A. 101-171, eff. 7-30-19; revised 10-22-19.)

25          Section 99. Effective date. This Act takes effect upon  
26          becoming law.