

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
10 to restore, protect, and enhance the environment,
11 including the purity of the air, land, and waters,
12 including 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) environmental laws should be supplemented to
20 ensure consistent, responsible regulation of all existing
21 CCR surface impoundments; and

22 (5) meaningful participation of State residents,
23 especially vulnerable populations who may be affected by

1 regulatory actions, is critical to ensure that
2 environmental justice considerations are incorporated in
3 the development of, decision-making related to, and
4 implementation of environmental laws and rulemaking that
5 protects and improves the well-being of communities in
6 this State that bear disproportionate burdens imposed by
7 environmental pollution.

8 Therefore, the purpose of this Section is to promote a
9 healthful environment, including clean water, air, and land,
10 meaningful public involvement, and the responsible disposal
11 and storage of coal combustion residuals, so as to protect
12 public health and to prevent pollution of the environment of
13 this State.

14 The provisions of this Section shall be liberally
15 construed to carry out the purposes of this Section.

16 (b) No person shall:

17 (1) cause or allow the discharge of any contaminants
18 from a CCR surface impoundment into the environment so as
19 to cause, directly or indirectly, a violation of this
20 Section or any regulations or standards adopted by the
21 Board under this Section, either alone or in combination
22 with contaminants from other sources;

23 (2) construct, install, modify, operate, or close any
24 CCR surface impoundment without a permit granted by the
25 Agency, or so as to violate any conditions imposed by such
26 permit, any provision of this Section or any regulations

1 or standards adopted by the Board under this Section; or

2 (3) cause or allow, directly or indirectly, the
3 discharge, deposit, injection, dumping, spilling, leaking,
4 or placing of any CCR upon the land in a place and manner
5 so as to cause or tend to cause a violation this Section or
6 any regulations or standards adopted by the Board under
7 this Section.

8 (c) (Blank). ~~For purposes of this Section, a permit issued~~
9 ~~by the Administrator of the United States Environmental~~
10 ~~Protection Agency under Section 4005 of the federal Resource~~
11 ~~Conservation and Recovery Act, shall be deemed to be a permit~~
12 ~~under this Section and subsection (y) of Section 39.~~

13 (d) Before commencing closure of a CCR surface
14 impoundment, in accordance with Board rules, the owner of a
15 CCR surface impoundment must submit to the Agency for approval
16 a closure alternatives analysis that analyzes all closure
17 methods being considered and that otherwise satisfies all
18 closure requirements adopted by the Board under this Act.
19 Complete removal of CCR, as specified by the Board's rules,
20 from the CCR surface impoundment must be considered and
21 analyzed. Section 3.405 does not apply to the Board's rules
22 specifying complete removal of CCR. The selected closure
23 method must ensure compliance with regulations adopted by the
24 Board pursuant to this Section.

25 (e) Owners or operators of CCR surface impoundments who
26 have submitted a closure plan to the Agency before May 1, 2019,

1 and who have completed closure prior to 24 months after July
2 30, 2019 (the effective date of Public Act 101-171) ~~this~~
3 ~~amendatory Act of the 101st General Assembly~~ shall not be
4 required to obtain a construction permit for the surface
5 impoundment closure under this Section.

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

18 (1) The cost estimate for the post-closure care of a
19 CCR surface impoundment shall be calculated using a
20 30-year post-closure care period or such longer period as
21 may be approved by the Agency under Board or federal
22 rules.

23 (2) The Agency is authorized to enter into such
24 contracts and agreements as it may deem necessary to carry
25 out the purposes of this Section. Neither the State, nor
26 the Director, nor any State employee shall be liable for

1 any damages or injuries arising out of or resulting from
2 any action taken under this Section.

3 (3) The Agency shall have the authority to approve or
4 disapprove any performance bond or other security posted
5 under this subsection. Any person whose performance bond
6 or other security is disapproved by the Agency may contest
7 the disapproval as a permit denial appeal pursuant to
8 Section 40.

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

19 (1) be at least as protective and comprehensive as the
20 federal regulations or amendments thereto promulgated by
21 the Administrator of the United States Environmental
22 Protection Agency in Subpart D of 40 CFR 257 governing CCR
23 surface impoundments;

24 (2) specify the minimum contents of CCR surface
25 impoundment construction and operating permit
26 applications, including the closure alternatives analysis

1 required under subsection (d);

2 (3) specify which types of permits include
3 requirements for closure, post-closure, remediation and
4 all other requirements applicable to CCR surface
5 impoundments;

6 (4) specify when permit applications for existing CCR
7 surface impoundments must be submitted, taking into
8 consideration whether the CCR surface impoundment must
9 close under the RCRA;

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

12 (6) specify meaningful public participation procedures
13 for the issuance of CCR surface impoundment construction
14 and operating permits, including, but not limited to,
15 public notice of the submission of permit applications, an
16 opportunity for the submission of public comments, an
17 opportunity for a public hearing prior to permit issuance,
18 and a summary and response of the comments prepared by the
19 Agency;

20 (7) prescribe the type and amount of the performance
21 bonds or other securities required under subsection (f),
22 and the conditions under which the State is entitled to
23 collect moneys from such performance bonds or other
24 securities;

25 (8) specify a procedure to identify areas of
26 environmental justice concern in relation to CCR surface

1 impoundments;

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

9 (10) define when complete removal of CCR is achieved
10 and specify the standards for responsible removal of CCR
11 from CCR surface impoundments, including, but not limited
12 to, dust controls and the protection of adjacent surface
13 water and groundwater; and

14 (11) describe the process and standards for
15 identifying a specific alternative source of groundwater
16 pollution when the owner or operator of the CCR surface
17 impoundment believes that groundwater contamination on the
18 site is not from the CCR surface impoundment.

19 (h) Any owner of a CCR surface impoundment that generates
20 CCR and sells or otherwise provides coal combustion byproducts
21 pursuant to Section 3.135 shall, every 12 months, post on its
22 publicly available website a report specifying the volume or
23 weight of CCR, in cubic yards or tons, that it sold or provided
24 during the past 12 months.

25 (i) The owner of a CCR surface impoundment shall post all
26 closure plans, permit applications, and supporting

1 documentation, as well as any Agency approval of the plans or
2 applications on its publicly available website.

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

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

8 \$50,000 for each closed CCR surface impoundment;

9 and

10 \$75,000 for each CCR surface impoundment that have
11 not completed closure.

12 (2) Annual fees to the Agency, beginning on July 1,
13 2020, of:

14 \$25,000 for each CCR surface impoundment that has
15 not completed closure; and

16 \$15,000 for each CCR surface impoundment that has
17 completed closure, but has not completed post-closure
18 care.

19 (k) All fees collected by the Agency under subsection (j)
20 shall be deposited into the Environmental Protection Permit
21 and Inspection Fund.

22 (l) The Coal Combustion Residual Surface Impoundment
23 Financial Assurance Fund is created as a special fund in the
24 State treasury. Any moneys forfeited to the State of Illinois
25 from any performance bond or other security required under
26 this Section shall be placed in the Coal Combustion Residual

1 Surface Impoundment Financial Assurance Fund and shall, upon
2 approval by the Governor and the Director, be used by the
3 Agency for the purposes for which such performance bond or
4 other security was issued. The Coal Combustion Residual
5 Surface Impoundment Financial Assurance Fund is not subject to
6 the provisions of subsection (c) of Section 5 of the State
7 Finance Act.

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

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

15 Section 99. Effective date. This Act takes effect upon
16 becoming law.