



Sen. Scott M. Bennett

Filed: 4/15/2021

10200SB1086sam001

LRB102 04909 CPF 25200 a

1 AMENDMENT TO SENATE BILL 1086

2 AMENDMENT NO. _____. Amend Senate Bill 1086 by replacing
3 everything after the enacting clause with the following:

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

1 pollution at active and inactive plants throughout this
2 State;

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

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

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

21 The provisions of this Section shall be liberally
22 construed to carry out the purposes of this Section.

23 (b) No person shall:

24 (1) cause or allow the discharge of any contaminants
25 from a CCR surface impoundment into the environment so as
26 to cause, directly or indirectly, a violation of this

1 Section or any regulations or standards adopted by the
2 Board under this Section, either alone or in combination
3 with contaminants from other sources;

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

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

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

20 (d) Before commencing closure of a CCR surface
21 impoundment, in accordance with Board rules, the owner of a
22 CCR surface impoundment must submit to the Agency for approval
23 a closure alternatives analysis that analyzes all closure
24 methods being considered and that otherwise satisfies all
25 closure requirements adopted by the Board under this Act.
26 Complete removal of CCR, as specified by the Board's rules,

1 from the CCR surface impoundment must be considered and
2 analyzed. Section 3.405 does not apply to the Board's rules
3 specifying complete removal of CCR. The selected closure
4 method must ensure compliance with regulations adopted by the
5 Board pursuant to this Section.

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

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

25 (1) The cost estimate for the post-closure care of a
26 CCR surface impoundment shall be calculated using a

1 30-year post-closure care period or such longer period as
2 may be approved by the Agency under Board or federal
3 rules.

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

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

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~~
22 ~~General Assembly~~ the Agency shall propose, and not later than
23 one year after receipt of the Agency's proposal the Board
24 shall adopt, rules under this Section. The rules must, at a
25 minimum:

26 (1) be at least as protective and comprehensive as the

1 federal regulations or amendments thereto promulgated by
2 the Administrator of the United States Environmental
3 Protection Agency in Subpart D of 40 CFR 257 governing CCR
4 surface impoundments;

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

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

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

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

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

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

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

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

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

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

26 (h) Any owner of a CCR surface impoundment that generates

1 CCR and sells or otherwise provides coal combustion byproducts
2 pursuant to Section 3.135 shall, every 12 months, post on its
3 publicly available website a report specifying the volume or
4 weight of CCR, in cubic yards or tons, that it sold or provided
5 during the past 12 months.

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

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

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

15 \$50,000 for each closed CCR surface impoundment;

16 and

17 \$75,000 for each CCR surface impoundment that have
18 not completed closure.

19 (2) Annual fees to the Agency, beginning on July 1,
20 2020, of:

21 \$25,000 for each CCR surface impoundment that has
22 not completed closure; and

23 \$15,000 for each CCR surface impoundment that has
24 completed closure, but has not completed post-closure
25 care.

26 (k) All fees collected by the Agency under subsection (j)

1 shall be deposited into the Environmental Protection Permit
2 and Inspection Fund.

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

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

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

22 Section 99. Effective date. This Act takes effect upon
23 becoming law."