

SB1695



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB1695

Introduced 2/26/2021, by Sen. Scott M. Bennett

SYNOPSIS AS INTRODUCED:

415 ILCS 5/22.59

Amends the Environmental Protection Act. Requires insurance to be used as a financial assurance to meet specified criteria. Provides that rules by the Pollution Control Board must specify that any and all contractors, subcontractors, and installers utilized to construct, install, modify, operate, or close a CCR surface impoundment must be participants in specified training programs. Makes other changes. Effective immediately.

LRB102 14988 CPF 20343 b

A BILL FOR

1 AN ACT concerning safety.

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) 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
11 this 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
20 construed 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,
25 water, 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~~
2 ~~Act 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
23 impoundment, in accordance with Board rules, the owner of a
24 CCR surface impoundment must submit to the Agency for approval
25 a closure alternatives analysis that analyzes all closure
26 methods being considered and that otherwise satisfies all

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

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

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

1 guaranteeing performance, ~~or~~ an irrevocable letter of credit,
2 or insurance that is not self-insurance.

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

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

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

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

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

24 (i) a surety bond or irrevocable letter of
25 credit covering the value of the total cost of
26 premiums over the life of the insurance policy,

1 plus 50% of that total cost; and

2 (ii) proof of a trust fund that shall receive
3 any forfeited funds from the surety bond or
4 irrevocable letter of credit under subdivision (i)
5 of this subparagraph (A) if the owner or operator
6 fails to pay insurance premiums.

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

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

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

22 (i) the cost estimate for closure, if used as
23 financial assurance for closure;

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

26 (iii) the cost estimate for remediation of

1 releases, if used as financial assurance for
2 remediation of releases.

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

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

13 (i) at least annually;
14 (ii) whenever there is a significant
15 modification to an approved plan for closure,
16 post-closure, or remediation of releases; and
17 (iii) upon request by the Agency.

18 (F) The policy shall guarantee that,
19 notwithstanding litigation:

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

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

25 (iii) funds will be available without delay
26 for remediation of releases, if used as financial

1 assurance for remediation of releases.

2 (G) For insurance used as financial assurance for
3 closure, the policy shall guarantee that once closure
4 begins the insurer will be responsible for payout of
5 funds up to an amount equal to the face amount of the
6 policy, upon the direction of the Agency, to the party
7 or parties the Agency specifies.

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

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

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

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

23 (L) The Board's rules required under subsection
24 (g) of this Section shall address, among other things,
25 how to ensure continued payment of premiums if the
26 trustee of the trust fund specified under subdivision

1 (ii) of subparagraph (A) of this paragraph (4) fails
2 to make timely payment of premiums.

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

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

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

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

1 shall adopt, rules under this Section. The rules must, at a
2 minimum:

3 (1) be at least as protective and comprehensive as the
4 federal regulations or amendments thereto promulgated by
5 the Administrator of the United States Environmental
6 Protection Agency in Subpart D of 40 CFR 257 governing CCR
7 surface impoundments;

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

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

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

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

22 (6) specify meaningful public participation procedures
23 for the issuance of CCR surface impoundment construction
24 and operating permits, including, but not limited to,
25 public notice of the submission of permit applications, an
26 opportunity for the submission of public comments, an

1 opportunity for a public hearing prior to permit issuance,
2 and a summary and response of the comments prepared by the
3 Agency;

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

9 (8) specify a procedure to identify areas of
10 environmental justice concern in relation to CCR surface
11 impoundments;

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

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

24 (11) describe the process and standards for
25 identifying a specific alternative source of groundwater
26 pollution when the owner or operator of the CCR surface

1 impoundment believes that groundwater contamination on the
2 site is not from the CCR surface impoundment.

3 (12) Specify that an owner or operator of a CCR
4 surface impoundment shall certify to the Agency that all
5 contractors, subcontractors, and installers utilized to
6 construct, install, modify, or close a CCR surface
7 impoundment in accordance with a permit issued under this
8 Act are participants in:

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

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

22 For purposes of this Section, "contractors,
23 subcontractors, and installers" shall not apply to
24 construction-related professional services.
25 "Construction-related professional services" includes, but is
26 not limited to, those services within the scope of: the

1 practice of architecture as defined in Section 4 of the
2 Illinois Architecture Practice Act of 1989; professional
3 engineering as defined in Section 4 of the Professional
4 Engineering Practice Act of 1989; the practice of a structural
5 engineer under the Structural Engineering Practice Act of
6 1989; or land surveying under the Illinois Professional Land
7 Surveyor Act of 1989.

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

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

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

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

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

24 and

25 \$75,000 for each CCR surface impoundment that have
26 not completed closure.

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

3 \$25,000 for each CCR surface impoundment that has
4 not completed closure; and

5 \$15,000 for each CCR surface impoundment that has
6 completed closure, but has not completed post-closure
7 care.

8 (k) All fees collected by the Agency under subsection (j)
9 shall be deposited into the Environmental Protection Permit
10 and Inspection Fund.

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

23 (m) The provisions of this Section shall apply, without
24 limitation, to all existing CCR surface impoundments and any
25 CCR surface impoundments constructed after July 30, 2019 (the
26 effective date of Public Act 101-171) ~~this amendatory Act of~~

1 ~~the 101st General Assembly~~, except to the extent prohibited by
2 the Illinois or United States Constitutions.

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

4 Section 99. Effective date. This Act takes effect upon
5 becoming law.