

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 and by adding Section 22.59a as  
6 follows:

7 (415 ILCS 5/22.59)

8 Sec. 22.59. CCR surface impoundments.

9 (a) The General Assembly finds that:

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

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

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

20 (4) environmental laws should be supplemented to  
21 ensure consistent, responsible regulation of all existing  
22 CCR surface impoundments; ~~and~~

23 (5) meaningful participation of State residents,

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

9 (6) the State places special emphasis on protecting  
10 the water quality of Lake Michigan, including the  
11 establishment of more stringent water quality standards  
12 for that body of water compared to water quality standards  
13 applicable for all other bodies of water throughout the  
14 State.

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;

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 of this Section  
13 or any regulations or standards adopted by the Board under  
14 this Section; or

15 (4) construct, install, modify, or close a CCR surface  
16 impoundment in accordance with a permit issued under this  
17 Act without certifying to the Agency that all contractors,  
18 subcontractors, and installers utilized to construct,  
19 install, modify, or close a CCR surface impoundment are  
20 participants in:

21 (A) a training program that is approved by and  
22 registered with the United States Department of  
23 Labor's Employment and Training Administration and  
24 that includes instruction in erosion control and  
25 environmental remediation; and

26 (B) a training program that is approved by and

1 registered with the United States Department of  
2 Labor's Employment and Training Administration and  
3 that includes instruction in the operation of heavy  
4 equipment and excavation.

5 Nothing in this paragraph (4) shall be construed to  
6 require providers of construction-related professional  
7 services to participate in a training program approved by  
8 and registered with the United States Department of  
9 Labor's Employment and Training Administration.

10 In this paragraph (4), "construction-related  
11 professional services" includes, but is not limited to,  
12 those services within the scope of: (i) the practice of  
13 architecture as regulated under the Illinois Architecture  
14 Practice Act of 1989; (ii) professional engineering as  
15 defined in Section 4 of the Professional Engineering  
16 Practice Act of 1989; (iii) the practice of a structural  
17 engineer as defined in Section 4 of the Structural  
18 Engineering Practice Act of 1989; or (iv) land surveying  
19 under the Illinois Professional Land Surveyor Act of 1989.

20 (c) (Blank).

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

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

7 (e) Owners or operators of CCR surface impoundments who  
8 have submitted a closure plan to the Agency before May 1, 2019,  
9 and who have completed closure prior to 24 months after July  
10 30, 2019 (the effective date of Public Act 101-171) shall not  
11 be 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) ensuring 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) the Agency shall propose, and not later  
22          than one year after receipt of the Agency's proposal the Board  
23          shall adopt, rules under this Section. The Board shall not be  
24          deemed in noncompliance with the rulemaking deadline due to  
25          delays in adopting rules as a result of the Joint Commission on  
26          Administrative Rules oversight process. The rules must, at a

1 minimum:

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

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

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

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

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

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

1 and a summary and response of the comments prepared by the  
2 Agency;

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

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

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

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

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



1 site is not from the CCR surface impoundment.

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

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

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

14 (1) An initial fee to the Agency within 6 months after  
15 July 30, 2019 (the effective date of Public Act 101-171)  
16 of:

17 \$50,000 for each closed CCR surface impoundment;

18 and

19 \$75,000 for each CCR surface impoundment that have  
20 not completed closure.

21 (2) Annual fees to the Agency, beginning on July 1,  
22 2020, of:

23 \$25,000 for each CCR surface impoundment that has  
24 not completed closure; and

25 \$15,000 for each CCR surface impoundment that has  
26 completed closure, but has not completed post-closure

1 care.

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

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

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

22 (n) This subsection only applies to an owner or operator  
23 of a facility that (i) has at least one CCR surface impoundment  
24 and (ii) is an electric generating plant located within 4,000  
25 feet of Lake Michigan.

26 CCR in all CCR surface impoundments subject to this

1 subsection, including CCR surface impoundments for which an  
2 adjusted standard has been sought pursuant to Section 28.1,  
3 shall be closed by removal and off-site disposal, pursuant to  
4 this Section, applicable Illinois Pollution Control Board  
5 regulations, and the following provisions:

6 (1) CCR surface impoundments under this subsection are  
7 not subject to the closure alternative analysis required  
8 under subsection (d).

9 (2) Notwithstanding any other requirements of this  
10 Section or Board rules or regulations, applications for  
11 closure construction subject to this subsection shall be  
12 submitted to the Agency within one year after the  
13 effective date of this amendatory Act of the 102nd General  
14 Assembly. Application requirements and permit issuance  
15 procedures shall follow those adopted by the Illinois  
16 Pollution Control Board under this Section.

17 (3) If the owner or operator of any CCR surface  
18 impoundment subject to this subsection has submitted a  
19 construction permit application to the Agency to close a  
20 subject CCR surface impoundment by any method other than  
21 removal under Part 845 of Title 35 of the Illinois  
22 Administrative Code, the owner or operator shall submit an  
23 amended construction permit application that complies with  
24 the requirements of this Section within one year after the  
25 effective date of this amendatory Act of 102nd General  
26 Assembly.

1           (4) Any permit issued by the Agency allowing a CCR  
2           surface impoundment subject to this subsection to close in  
3           place shall be declared void. The Agency shall not issue  
4           any operating permit or construction permit allowing  
5           closure in place to the owner or operator of any CCR  
6           surface impoundment subject to this subsection.

7           (Source: P.A. 101-171, eff. 7-30-19; 102-16, eff. 6-17-21;  
8           102-137, eff. 7-23-21; 102-309, eff. 8-6-21; 102-558, eff.  
9           8-20-21; 102-662, eff. 9-15-21; revised 10-14-21.)

10           (415 ILCS 5/22.59a new)

11           Sec. 22.59a. Great Lakes CCR protection.

12           (a) The General Assembly finds that:

13           (1) The State has a long-standing policy to restore,  
14           protect, and enhance the environment, and has a particular  
15           interest in preserving the quality of Lake Michigan, which  
16           serves as a drinking water source for millions of State  
17           residents and provides irreplaceable recreational,  
18           ecological, and economic value to Illinois.

19           (2) CCR generated by the electric generating industry  
20           has contaminated, and continues to contaminate, Lake  
21           Michigan, and CCR placed in unlined deposits, including  
22           deposits outside of CCR surface impoundments as well as in  
23           CCR surface impoundments, continues to threaten the  
24           quality of Lake Michigan's water.

25           (3) The purpose of this Section is to protect Lake

1 Michigan against further contamination from CCR.

2 (b) This Section only applies to an owner or operator of a  
3 facility that (i) generates or has generated CCR that is not  
4 disposed of, treated, stored, or abandoned in a CCR surface  
5 impoundment and (ii) is an electric generating plant located  
6 within 4,000 feet of Lake Michigan.

7 (c) An owner or operator of a facility that is subject to  
8 this Section shall remove from the owner's or operator's site,  
9 for off-site disposal, all CCR generated by the facility and  
10 remediate all soil and groundwater impacted by the CCR, in  
11 accordance with the following:

12 (1) Within one year after the effective date of this  
13 amendatory Act of the 102nd General Assembly, the owner or  
14 operator shall conduct a site investigation and submit to  
15 the Agency a site investigation report that identifies the  
16 full extent of CCR at the site. The investigation and  
17 report shall also identify the full extent of soil and  
18 groundwater that, as a result of the CCR, exceeds the most  
19 stringent remediation objectives adopted under Title XVII  
20 of this Act.

21 (A) Within 5 days after submitting the report to  
22 the Agency, the owner or operator shall post public  
23 notice of the report's submission (i) on the owner or  
24 operator's website, along with a copy of the report  
25 for public viewing, and (ii) in a newspaper of general  
26 distribution in the municipality where the applicable

1           electric generating plant is located. The notice shall  
2           be provided in English and Spanish and shall inform  
3           the public of their right to submit comments on the  
4           report to the Agency within 30 days after the date the  
5           notice is published in the newspaper. The owner or  
6           operator shall also maintain a copy of the report in a  
7           public repository in the municipality where the  
8           applicable electric generating plant is located for  
9           public viewing, which shall be identified in the  
10          public notice.

11           (B) Within 90 days after receipt of the site  
12          investigation report, the Agency shall determine  
13          whether the investigation and report complies with  
14          this paragraph (1). In making its determination, the  
15          Agency shall consider all public comments submitted  
16          within 30 days after the date of the newspaper notice  
17          required under subparagraph (A).

18           (C) If the Agency determines the investigation and  
19          report complies with this paragraph (1) it shall  
20          notify the owner or operator in writing of its  
21          determination. The owner or operator shall then submit  
22          a CCR removal and remediation plan in accordance with  
23          paragraph (2).

24           (D) If the Agency determines the investigation or  
25          report does not comply with this paragraph (1) it  
26          shall notify the owner or operator in writing of its

1 determination and the reasons for the determination.

2 The owner or operator shall then have 6 months to (i)  
3 perform additional investigation or correct any  
4 deficiencies and (ii) submit an amended site  
5 investigation report to the Agency, which shall be  
6 subject to the same submission and review procedures  
7 set forth in this paragraph (1).

8 (2) Within 6 months after the Agency's approval of the  
9 site investigation report, the owner or operator shall  
10 submit to the Agency a CCR removal and remediation plan  
11 that will achieve the removal of all CCR at the site and  
12 the remediation of all soil and groundwater that, as a  
13 result of the CCR, exceeds the most stringent remediation  
14 objectives adopted under Title XVII of this Act. The plan  
15 shall include a schedule for completion of its major  
16 milestones, along with the following:

17 (A) An analysis of the modes for transporting the  
18 removed CCR off-site, including by rail, barge,  
19 low-polluting trucks, or a combination of these  
20 transportation modes.

21 (B) Removal of CCR consistent with 35 Ill. Adm.  
22 Code 845.740 and 845.760.

23 (C) Within 5 days after submitting the plan to the  
24 Agency, the owner or operator shall post public notice  
25 of the plan's submission (i) on the owner or  
26 operator's website, along with a copy of the plan for

1       public viewing, and (ii) in a newspaper of general  
2       distribution in the municipality where the applicable  
3       electric generating plant is located. The notice shall  
4       be provided in English and Spanish and shall inform  
5       the public of their right to submit comments on the  
6       plan to the Agency within 30 days after the date the  
7       notice is published in the newspaper. The owner or  
8       operator shall also maintain a copy of the report in a  
9       public repository in the municipality where the  
10       applicable electric generating plant is located for  
11       public viewing, which shall be identified in the  
12       public notice.

13       (D) Within 90 days after receipt of the plan, the  
14       Agency shall determine whether the plan complies with  
15       this paragraph (2). In making its determination, the  
16       Agency shall consider all public comments submitted  
17       within 30 days after the date of the newspaper notice  
18       required under subparagraph (C).

19       (E) If the Agency determines the plan, with or  
20       without Agency modifications, complies with paragraph  
21       (2), it shall notify the owner or operator in writing  
22       of its determination. The owner or operator shall then  
23       proceed with implementation of the plan, including any  
24       modifications by the Agency, and submission of a  
25       removal and remediation report in accordance with  
26       paragraph (3).



1           (F) If the Agency determines the investigation or  
2           report does not comply with paragraph (2), it shall  
3           notify the owner or operator in writing of its  
4           determination and the reasons for the determination.  
5           The owner or operator shall then have 60 days to submit  
6           an amended plan to the Agency, which shall be subject  
7           to the same submission and review procedures set forth  
8           in subparagraphs (C) and (D).

9           (3) In accordance with a schedule approved by the  
10          Agency, the owner or operator shall implement the  
11          remediation plan and provide the Agency with updates on  
12          the plan's implementation. Upon completion of the plan,  
13          the owner or operator shall submit a completion report to  
14          the Agency.

15          (A) Within 5 days after submitting an update or  
16          the completion report to the Agency on plan  
17          implementation, the owner or operator shall post  
18          public notice of the report's submission (i) on the  
19          owner or operator's website, along with a copy of the  
20          report for public viewing, and (ii) in a newspaper of  
21          general distribution in the municipality where the  
22          applicable electric generating plant is located. The  
23          notice shall be provided in English and Spanish and  
24          shall inform the public of their right to submit  
25          comments on the report to the Agency within 30 days  
26          after the date the notice is published in the

1       newspaper. The owner or operator shall also maintain a  
2       copy of the report in a public repository in the  
3       municipality where the applicable electric generating  
4       plant is located for public viewing, which shall be  
5       identified in the public notice.

6           (B) Within 90 days after receipt of the completion  
7       report, the Agency shall determine whether the removal  
8       and remediation has resulted in (i) the removal of all  
9       CCR at the site and (ii) the remediation of all soil  
10       and groundwater that, as a result of the CCR, exceeds  
11       the most stringent remediation objectives adopted  
12       under Title XVII of this Act. In making its  
13       determination, the Agency shall consider all public  
14       comments submitted within 30 days after the date of  
15       the newspaper notice required under subparagraph (A).

16           (C) If the Agency determines that the required  
17       removal and remediation is complete, it shall notify  
18       the owner or operator in writing of its determination.

19           (D) If the Agency determines that the required  
20       removal and remediation is not complete, it shall  
21       notify the owner or operator in writing of its  
22       determination and the reasons for the determination.  
23       The owner or operator shall then continue removal or  
24       remediation, and submit reports to the Agency, in  
25       accordance with a schedule established by the Agency.  
26       Reports shall be subject to the same submission and

1 review procedures set forth in subparagraphs (A) and  
2 (B). If necessary, the owner or operator may amend the  
3 plan and submit it for review and approval in  
4 accordance with paragraph (2).

5 (d) Except for the State, its agencies and institutions, a  
6 unit of local government, or not-for-profit electric  
7 cooperative as defined in Section 3.4 of the Electric Supplier  
8 Act, an owner or operator shall post with the Agency a  
9 performance bond or other security for the purpose of ensuring  
10 removal and remediation in accordance with this Section. The  
11 only acceptable forms of financial assurance are the forms of  
12 financial assurance that are acceptable for CCR surface  
13 impoundments under Section 22.59.

14 (e) The Agency may enter into such contracts and  
15 agreements as it deems necessary to carry out the purposes of  
16 this Section. Neither the State, nor the Director of the  
17 Agency, nor any State employee shall be liable for any damages  
18 or injuries arising out of or resulting from any action taken  
19 under this Section.

20 (f) The Agency may approve or disapprove any performance  
21 bond or other security posted under this Section. Any person  
22 whose performance bond or other security is disapproved by the  
23 Agency may contest the disapproval as a permit denial appeal  
24 pursuant to Section 40.

25 Section 97. Severability. The provisions of this Act are

1 severable under Section 1.31 of the Statute on Statutes.

2 Section 99. Effective date. This Act takes effect upon  
3 becoming law.