



Sen. Adriane Johnson

Filed: 2/18/2022

10200SB3073sam002

LRB102 23422 CPF 36554 a

1 AMENDMENT TO SENATE BILL 3073

2 AMENDMENT NO. _____. Amend Senate Bill 3073 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 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

1 has caused groundwater contamination and other forms of
2 pollution at active and inactive plants throughout this
3 State;

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

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

16 (6) the State places special emphasis on protecting
17 the water quality of Lake Michigan, including the
18 establishment of more stringent water quality standards
19 for that body of water compared to water quality standards
20 applicable for all other bodies of water throughout the
21 State.

22 Therefore, the purpose of this Section is to promote a
23 healthful environment, including clean water, air, and land,
24 meaningful public involvement, and the responsible disposal
25 and storage of coal combustion residuals, so as to protect
26 public health and to prevent pollution of the environment of

1 this State.

2 The provisions of this Section shall be liberally
3 construed to carry out the purposes of this Section.

4 (b) No person shall:

5 (1) cause or allow the discharge of any contaminants
6 from a CCR surface impoundment into the environment so as
7 to cause, directly or indirectly, a violation of this
8 Section or any regulations or standards adopted by the
9 Board under this Section, either alone or in combination
10 with contaminants from other sources;

11 (2) construct, install, modify, operate, or close any
12 CCR surface impoundment without a permit granted by the
13 Agency, or so as to violate any conditions imposed by such
14 permit, any provision of this Section or any regulations
15 or standards adopted by the Board under this Section;

16 (3) cause or allow, directly or indirectly, the
17 discharge, deposit, injection, dumping, spilling, leaking,
18 or placing of any CCR upon the land in a place and manner
19 so as to cause or tend to cause a violation of this Section
20 or any regulations or standards adopted by the Board under
21 this Section; or

22 (4) construct, install, modify, or close a CCR surface
23 impoundment in accordance with a permit issued under this
24 Act without certifying to the Agency that all contractors,
25 subcontractors, and installers utilized to construct,
26 install, modify, or close a CCR surface impoundment are

1 participants in:

2 (A) a training program that is approved by and
3 registered with the United States Department of
4 Labor's Employment and Training Administration and
5 that includes instruction in erosion control and
6 environmental remediation; and

7 (B) a training program that is approved by and
8 registered with the United States Department of
9 Labor's Employment and Training Administration and
10 that includes instruction in the operation of heavy
11 equipment and excavation.

12 Nothing in this paragraph (4) shall be construed to
13 require providers of construction-related professional
14 services to participate in a training program approved by
15 and registered with the United States Department of
16 Labor's Employment and Training Administration.

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

1 (c) (Blank).

2 (d) Before commencing closure of a CCR surface
3 impoundment, in accordance with Board rules, the owner of a
4 CCR surface impoundment must submit to the Agency for approval
5 a closure alternatives analysis that analyzes all closure
6 methods being considered and that otherwise satisfies all
7 closure requirements adopted by the Board under this Act.
8 Complete removal of CCR, as specified by the Board's rules,
9 from the CCR surface impoundment must be considered and
10 analyzed. Section 3.405 does not apply to the Board's rules
11 specifying complete removal of CCR. The selected closure
12 method must ensure compliance with regulations adopted by the
13 Board pursuant to this Section.

14 (e) Owners or operators of CCR surface impoundments who
15 have submitted a closure plan to the Agency before May 1, 2019,
16 and who have completed closure prior to 24 months after July
17 30, 2019 (the effective date of Public Act 101-171) shall not
18 be required to obtain a construction permit for the surface
19 impoundment closure under this Section.

20 (f) Except for the State, its agencies and institutions, a
21 unit of local government, or not-for-profit electric
22 cooperative as defined in Section 3.4 of the Electric Supplier
23 Act, any person who owns or operates a CCR surface impoundment
24 in this State shall post with the Agency a performance bond or
25 other security for the purpose of: (i) ensuring closure of the
26 CCR surface impoundment and post-closure care in accordance

1 with this Act and its rules; and (ii) ensuring remediation of
2 releases from the CCR surface impoundment. The only acceptable
3 forms of financial assurance are: a trust fund, a surety bond
4 guaranteeing payment, a surety bond guaranteeing performance,
5 or an irrevocable letter of credit.

6 (1) The cost estimate for the post-closure care of a
7 CCR surface impoundment shall be calculated using a
8 30-year post-closure care period or such longer period as
9 may be approved by the Agency under Board or federal
10 rules.

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

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

23 (g) The Board shall adopt rules establishing construction
24 permit requirements, operating permit requirements, design
25 standards, reporting, financial assurance, and closure and
26 post-closure care requirements for CCR surface impoundments.

1 Not later than 8 months after July 30, 2019 (the effective date
2 of Public Act 101-171) the Agency shall propose, and not later
3 than one year after receipt of the Agency's proposal the Board
4 shall adopt, rules under this Section. The Board shall not be
5 deemed in noncompliance with the rulemaking deadline due to
6 delays in adopting rules as a result of the Joint Commission on
7 Administrative Rules oversight process. The rules must, at a
8 minimum:

9 (1) be at least as protective and comprehensive as the
10 federal regulations or amendments thereto promulgated by
11 the Administrator of the United States Environmental
12 Protection Agency in Subpart D of 40 CFR 257 governing CCR
13 surface impoundments;

14 (2) specify the minimum contents of CCR surface
15 impoundment construction and operating permit
16 applications, including the closure alternatives analysis
17 required under subsection (d);

18 (3) specify which types of permits include
19 requirements for closure, post-closure, remediation and
20 all other requirements applicable to CCR surface
21 impoundments;

22 (4) specify when permit applications for existing CCR
23 surface impoundments must be submitted, taking into
24 consideration whether the CCR surface impoundment must
25 close under the RCRA;

26 (5) specify standards for review and approval by the

1 Agency of CCR surface impoundment permit applications;

2 (6) specify meaningful public participation procedures
3 for the issuance of CCR surface impoundment construction
4 and operating permits, including, but not limited to,
5 public notice of the submission of permit applications, an
6 opportunity for the submission of public comments, an
7 opportunity for a public hearing prior to permit issuance,
8 and a summary and response of the comments prepared by the
9 Agency;

10 (7) prescribe the type and amount of the performance
11 bonds or other securities required under subsection (f),
12 and the conditions under which the State is entitled to
13 collect moneys from such performance bonds or other
14 securities;

15 (8) specify a procedure to identify areas of
16 environmental justice concern in relation to CCR surface
17 impoundments;

18 (9) specify a method to prioritize CCR surface
19 impoundments required to close under RCRA if not otherwise
20 specified by the United States Environmental Protection
21 Agency, so that the CCR surface impoundments with the
22 highest risk to public health and the environment, and
23 areas of environmental justice concern are given first
24 priority;

25 (10) define when complete removal of CCR is achieved
26 and specify the standards for responsible removal of CCR

1 from CCR surface impoundments, including, but not limited
2 to, dust controls and the protection of adjacent surface
3 water and groundwater; and

4 (11) describe the process and standards for
5 identifying a specific alternative source of groundwater
6 pollution when the owner or operator of the CCR surface
7 impoundment believes that groundwater contamination on the
8 site is not from the CCR surface impoundment.

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

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

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

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

24 \$50,000 for each closed CCR surface impoundment;

25 and

26 \$75,000 for each CCR surface impoundment that have

1 not completed closure.

2 (2) Annual fees to the Agency, beginning on July 1,
3 2020, of:

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

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

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

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

24 (m) The provisions of this Section shall apply, without
25 limitation, to all existing CCR surface impoundments and any
26 CCR surface impoundments constructed after July 30, 2019 (the

1 effective date of Public Act 101-171), except to the extent
2 prohibited by the Illinois or United States Constitutions.

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

7 CCR in all CCR surface impoundments subject to this
8 subsection, including CCR surface impoundments for which an
9 adjusted standard has been sought pursuant to Section 28.1,
10 shall be closed by removal and off-site disposal, pursuant to
11 this Section, applicable Illinois Pollution Control Board
12 regulations, and the following provisions:

13 (1) CCR surface impoundments under this subsection are
14 not subject to the closure alternative analysis required
15 under subsection (d).

16 (2) Notwithstanding any other requirements of this
17 Section or Board rules or regulations, applications for
18 closure construction subject to this subsection shall be
19 submitted to the Agency within one year after the
20 effective date of this amendatory Act of the 102nd General
21 Assembly. Application requirements and permit issuance
22 procedures shall follow those adopted by the Illinois
23 Pollution Control Board under this Section.

24 (3) If the owner or operator of any CCR surface
25 impoundment subject to this subsection has submitted a
26 construction permit application to the Agency to close a

1 subject CCR surface impoundment by any method other than
2 removal under Part 845 of Title 35 of the Illinois
3 Administrative Code, the owner or operator shall submit an
4 amended construction permit application that complies with
5 the requirements of this Section within one year after the
6 effective date of this amendatory Act of 102nd General
7 Assembly.

8 (4) Any permit issued by the Agency allowing a CCR
9 surface impoundment subject to this subsection to close in
10 place shall be declared void. The Agency shall not issue
11 any operating permit or construction permit allowing
12 closure in place to the owner or operator of any CCR
13 surface impoundment subject to this subsection.

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

17 (415 ILCS 5/22.59a new)

18 Sec. 22.59a. Great Lakes CCR protection.

19 (a) The General Assembly finds that:

20 (1) The State has a long-standing policy to restore,
21 protect, and enhance the environment, and has a particular
22 interest in preserving the quality of Lake Michigan, which
23 serves as a drinking water source for millions of State
24 residents and provides irreplaceable recreational,
25 ecological, and economic value to Illinois.

1 (2) CCR generated by the electric generating industry
2 has contaminated, and continues to contaminate, Lake
3 Michigan, and CCR placed in unlined deposits, including
4 deposits outside of CCR surface impoundments as well as in
5 CCR surface impoundments, continues to threaten the
6 quality of Lake Michigan's water.

7 (3) The purpose of this Section is to protect Lake
8 Michigan against further contamination from CCR.

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

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

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

1 of this Act.

2 (A) Within 5 days after submitting the report to
3 the Agency, the owner or operator shall post public
4 notice of the report's submission (i) on the owner or
5 operator's website, along with a copy of the report
6 for public viewing, and (ii) in a newspaper of general
7 distribution in the municipality where the applicable
8 electric generating plant is located. The notice shall
9 be provided in English and Spanish and shall inform
10 the public of their right to submit comments on the
11 report to the Agency within 30 days after the date the
12 notice is published in the newspaper. The owner or
13 operator shall also maintain a copy of the report in a
14 public repository in the municipality where the
15 applicable electric generating plant is located for
16 public viewing, which shall be identified in the
17 public notice.

18 (B) Within 90 days after receipt of the site
19 investigation report, the Agency shall determine
20 whether the investigation and report complies with
21 this paragraph (1). In making its determination, the
22 Agency shall consider all public comments submitted
23 within 30 days after the date of the newspaper notice
24 required under subparagraph (A).

25 (C) If the Agency determines the investigation and
26 report complies with this paragraph (1) it shall

1 notify the owner or operator in writing of its
2 determination. The owner or operator shall then submit
3 a CCR removal and remediation plan in accordance with
4 paragraph (2).

5 (D) If the Agency determines the investigation or
6 report does not comply with this paragraph (1) it
7 shall notify the owner or operator in writing of its
8 determination and the reasons for the determination.
9 The owner or operator shall then have 6 months to (i)
10 perform additional investigation or correct any
11 deficiencies and (ii) submit an amended site
12 investigation report to the Agency, which shall be
13 subject to the same submission and review procedures
14 set forth in this paragraph (1).

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

24 (A) An analysis of the modes for transporting the
25 removed CCR off-site, including by rail, barge,
26 low-polluting trucks, or a combination of these

1 transportation modes.

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

4 (C) Within 5 days after submitting the plan to the
5 Agency, the owner or operator shall post public notice
6 of the plan's submission (i) on the owner or
7 operator's website, along with a copy of the plan for
8 public viewing, and (ii) in a newspaper of general
9 distribution in the municipality where the applicable
10 electric generating plant is located. The notice shall
11 be provided in English and Spanish and shall inform
12 the public of their right to submit comments on the
13 plan to the Agency within 30 days after the date the
14 notice is published in the newspaper. The owner or
15 operator shall also maintain a copy of the report in a
16 public repository in the municipality where the
17 applicable electric generating plant is located for
18 public viewing, which shall be identified in the
19 public notice.

20 (D) Within 90 days after receipt of the plan, the
21 Agency shall determine whether the plan complies with
22 this paragraph (2). In making its determination, the
23 Agency shall consider all public comments submitted
24 within 30 days after the date of the newspaper notice
25 required under subparagraph (C).

26 (E) If the Agency determines the plan, with or

1 without Agency modifications, complies with paragraph
2 (2), it shall notify the owner or operator in writing
3 of its determination. The owner or operator shall then
4 proceed with implementation of the plan, including any
5 modifications by the Agency, and submission of a
6 removal and remediation report in accordance with
7 paragraph (3).

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

16 (3) In accordance with a schedule approved by the
17 Agency, the owner or operator shall implement the
18 remediation plan and provide the Agency with updates on
19 the plan's implementation. Upon completion of the plan,
20 the owner or operator shall submit a completion report to
21 the Agency.

22 (A) Within 5 days after submitting an update or
23 the completion report to the Agency on plan
24 implementation, the owner or operator shall post
25 public notice of the report's submission (i) on the
26 owner or operator's website, along with a copy of the

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

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

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

26 (D) If the Agency determines that the required

1 removal and remediation is not complete, it shall
2 notify the owner or operator in writing of its
3 determination and the reasons for the determination.
4 The owner or operator shall then continue removal or
5 remediation, and submit reports to the Agency, in
6 accordance with a schedule established by the Agency.
7 Reports shall be subject to the same submission and
8 review procedures set forth in subparagraphs (A) and
9 (B). If necessary, the owner or operator may amend the
10 plan and submit it for review and approval in
11 accordance with paragraph (2).

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

21 (e) The Agency may enter into such contracts and
22 agreements as it deems necessary to carry out the purposes of
23 this Section. Neither the State, nor the Director of the
24 Agency, nor any State employee shall be liable for any damages
25 or injuries arising out of or resulting from any action taken
26 under this Section.

1 (f) The Agency may approve or disapprove any performance
2 bond or other security posted under this Section. Any person
3 whose performance bond or other security is disapproved by the
4 Agency may contest the disapproval as a permit denial appeal
5 pursuant to Section 40.

6 Section 97. Severability. The provisions of this Act are
7 severable under Section 1.31 of the Statute on Statutes.

8 Section 99. Effective date. This Act takes effect upon
9 becoming law.".