



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

SB2567

Introduced 2/15/2008, by Sen. Michael W. Frerichs

#### SYNOPSIS AS INTRODUCED:

415 ILCS 5/3.135

was 415 ILCS 5/3.94

Amends the Environmental Protection Act. In a Section defining "coal combustion by-product" (CCB), provides that coal combustion waste must be covered with 12 inches of soil, within 30 days after deposit of the coal combustion waste, before it may be considered as CCB. Provides that coal combustion waste may be used as CCB only if the structural fill is located no less than 500 feet from any residence and any well being used as a residential water source. Provides for Agency inspection of structural fill CCB projects. Provides that the Agency must adopt rules concerning the use of coal combustion waste and sets out requirements for those rules. Provides a cause of action for persons harmed by the violation of that provision.

LRB095 19903 BDD 46318 b

FISCAL NOTE ACT  
MAY APPLY

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 3.135 as follows:

6 (415 ILCS 5/3.135) (was 415 ILCS 5/3.94)

7 Sec. 3.135. Coal combustion by-product; CCB.

8 (a) "Coal combustion by-product" (CCB) means coal  
9 combustion waste when used beneficially in any of the following  
10 ways:

11 (1) The extraction or recovery of material compounds  
12 contained within CCB.

13 (2) The use of CCB as a raw ingredient or mineral  
14 filler in the manufacture of the following commercial  
15 products: cement; concrete and concrete mortars;  
16 cementious products including block, pipe and  
17 precast/prestressed components; asphalt or cementious  
18 roofing products; plastic products including pipes and  
19 fittings; paints and metal alloys; kiln fired products  
20 including bricks, blocks, and tiles; abrasive media;  
21 gypsum wallboard; asphaltic concrete, or asphalt based  
22 paving material.

23 (3) CCB used (A) in accordance with the Illinois

1 Department of Transportation ("IDOT") standard  
2 specifications and subsection (a-5) of this Section or (B)  
3 under the approval of the Department of Transportation for  
4 IDOT projects.

5 (4) Bottom ash used as antiskid material, athletic  
6 tracks, or foot paths.

7 (5) Use in the stabilization or modification of soils  
8 providing the CCB meets the IDOT specifications for soil  
9 modifiers.

10 (6) CCB used as a functionally equivalent substitute  
11 for agricultural lime as a soil conditioner.

12 (7) Bottom ash used in non-IDOT pavement sub-base or  
13 base, pipe bedding, or foundation backfill.

14 (8) Structural fill, when used in an engineered  
15 application or combined with cement, sand, or water to  
16 produce a controlled strength fill material and covered  
17 with 12 inches of soil, within 30 days after deposit of the  
18 coal combustion waste, unless infiltration is prevented by  
19 the material itself or other cover material. Coal  
20 combustion waste may be used as CCB under this item (8)  
21 only if the structural fill is located no less than 500  
22 feet from any residence and any well being used as a  
23 residential water source.

24 Within 3 months after notification to the Agency under  
25 item (C) of subsection (a-5) of this Section, the Agency  
26 must inspect the structural fill project to ensure that the

1       cover requirements of this item (8) are satisfied for each  
2       project involving the use of coal combustion waste as  
3       structural fill.

4           (9) Mine subsidence, mine fire control, mine sealing,  
5       and mine reclamation.

6           (a-5) Except to the extent that the uses are otherwise  
7       authorized by law without such restrictions, the uses specified  
8       in items (a) (3) (A) and (a) (7) through (9) shall be subject to  
9       the following conditions:

10           (A) CCB shall not have been mixed with hazardous waste  
11       prior to use.

12           (B) CCB shall not exceed Class I Groundwater Standards  
13       for metals when tested utilizing test method ASTM D3987-85.  
14       The sample or samples tested shall be representative of the  
15       CCB being considered for use.

16           (C) Unless otherwise exempted, users of CCB for the  
17       purposes described in items (a) (3) (A) and (a) (7) through  
18       (9) of this Section shall provide notification to the  
19       Agency for each project utilizing CCB documenting the  
20       quantity of CCB utilized and certification of compliance  
21       with conditions (A) and (B) of this subsection.  
22       Notification shall not be required for users of CCB for  
23       purposes described in items (a) (1), (a) (2), (a) (3) (B),  
24       (a) (4), (a) (5) and (a) (6) of this Section, or as required  
25       specifically under a beneficial use determination as  
26       provided under this Section, or pavement base, parking lot

1 base, or building base projects utilizing less than 10,000  
2 tons, flowable fill/grout projects utilizing less than  
3 1,000 cubic yards or other applications utilizing less than  
4 100 tons.

5 (D) Fly ash shall be managed in a manner that minimizes  
6 the generation of airborne particles and dust using  
7 techniques such as moisture conditioning, granulating,  
8 inground application, or other demonstrated method.

9 (E) CCB is not to be accumulated speculatively. CCB is  
10 not accumulated speculatively if during the calendar year,  
11 the CCB used is equal to 75% of the CCB by weight or volume  
12 accumulated at the beginning of the period.

13 (F) CCB shall include any prescribed mixture of fly  
14 ash, bottom ash, boiler slag, flue gas desulfurization  
15 scrubber sludge, fluidized bed combustion ash, and stoker  
16 boiler ash and shall be tested as intended for use.

17 (b) To encourage and promote the utilization of CCB in  
18 productive and beneficial applications, upon request by the  
19 applicant, the Agency shall make a written beneficial use  
20 determination that coal-combustion waste is CCB when used in a  
21 manner other than those uses specified in subsection (a) of  
22 this Section if the applicant demonstrates that use of the  
23 coal-combustion waste satisfies all of the following criteria:  
24 the use will not cause, threaten, or allow the discharge of any  
25 contaminant into the environment; the use will otherwise  
26 protect human health and safety and the environment; and the

1 use constitutes a legitimate use of the coal-combustion waste  
2 as an ingredient or raw material that is an effective  
3 substitute for an analogous ingredient or raw material.

4 The Agency's beneficial use determinations may allow the  
5 uses set forth in items (a)(3)(A) and (a)(7) through (9) of  
6 this Section without the CCB being subject to the restrictions  
7 set forth in subdivisions (a-5)(B) and (a-5)(E) of this  
8 Section.

9 Within 90 days after the receipt of an application for a  
10 beneficial use determination under this subsection (b), the  
11 Agency shall, in writing, approve, disapprove, or approve with  
12 conditions the beneficial use. Any disapproval or approval with  
13 conditions shall include the Agency's reasons for the  
14 disapproval or conditions. Failure of the Agency to issue a  
15 decision within 90 days shall constitute disapproval of the  
16 beneficial use request. These beneficial use determinations  
17 are subject to review under Section 40 of this Act.

18 Any approval of a beneficial use under this subsection (b)  
19 shall become effective upon the date of the Agency's written  
20 decision and remain in effect for a period of 5 years. If an  
21 applicant desires to continue a beneficial use after the  
22 expiration of the 5-year period, the applicant must submit an  
23 application for renewal no later than 90 days prior to the  
24 expiration. The beneficial use approval shall be automatically  
25 extended unless denied by the Agency in writing with the  
26 Agency's reasons for disapproval, or unless the Agency has

1 requested an extension for review, in which case the use will  
2 continue to be allowed until an Agency determination is made.

3 Coal-combustion waste for which a beneficial use is  
4 approved pursuant to this subsection (b) shall be considered  
5 CCB during the effective period of the approval, as long as it  
6 is used in accordance with the approval and any conditions.

7 Notwithstanding the other provisions of this subsection  
8 (b), written beneficial use determination applications for the  
9 use of CCB at sites governed by the federal Surface Mining  
10 Control and Reclamation Act of 1977 (P.L. 95-87) or the rules  
11 and regulations thereunder, or by any law or rule or regulation  
12 adopted by the State of Illinois pursuant thereto, shall be  
13 reviewed and approved by the Office of Mines and Minerals  
14 within the Department of Natural Resources pursuant to 62 Ill.  
15 Adm. Code §§ 1700-1850. Further, appeals of those  
16 determinations shall be made pursuant to the Illinois  
17 Administrative Review Law.

18 The Board shall adopt rules establishing standards and  
19 procedures for the Agency's issuance of beneficial use  
20 determinations under this subsection (b). The Board rules may  
21 also, but are not required to, include standards and procedures  
22 for the revocation of the beneficial use determinations. Prior  
23 to the effective date of Board rules adopted under this  
24 subsection (b), the Agency is authorized to make beneficial use  
25 determinations in accordance with this subsection (b).

26 The Agency is authorized to prepare and distribute guidance

1 documents relating to its administration of this Section.  
2 Guidance documents prepared under this subsection are not rules  
3 for the purposes of the Illinois Administrative Procedure Act.

4 The Agency must adopt rules concerning the use of coal  
5 combustion waste under item (8) of subsection (a). The rules  
6 must include specific guidelines detailing the use of coal  
7 combustion waste as structural fill and a site approval process  
8 for all uses of CCB as structural fill. The site approval  
9 process must include (i) an opportunity for public comment and  
10 (ii) input from the Department of Natural Resources on whether  
11 the structural fill project will effect any endangered species.

12 (c) In addition to the other penalties and remedies  
13 provided in this Act, any person harmed by a violation of item  
14 (8) of subsection (a) of this Section may bring a civil action  
15 in the circuit court of the county of that person's residence  
16 for damages or other appropriate legal or equitable remedies  
17 against the violator.

18 (Source: P.A. 94-66, eff. 1-1-06.)