

AN ACT concerning regulation.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Environmental Protection Act is amended by changing Section 22.59 as follows:

(415 ILCS 5/22.59)

Sec. 22.59. CCR surface impoundments.

(a) The General Assembly finds that:

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

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

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

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

(5) meaningful participation of State residents, especially vulnerable populations who may be affected by

regulatory actions, is critical to ensure that environmental justice considerations are incorporated in the development of, decision-making related to, and implementation of environmental laws and rulemaking that protects and improves the well-being of communities in this State that bear disproportionate burdens imposed by environmental pollution.

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

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

(b) No person shall:

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

(2) construct, install, modify, operate, or close any CCR surface impoundment without a permit granted by the Agency, or so as to violate any conditions imposed by such permit, any provision of this Section or any regulations

or standards adopted by the Board under this Section; or

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

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

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

(e) Owners or operators of CCR surface impoundments who have submitted a closure plan to the Agency before May 1, 2019,

and who have completed closure prior to 24 months after July 30, 2019 (the effective date of Public Act 101-171) ~~this amendatory Act of the 101st General Assembly~~ shall not be required to obtain a construction permit for the surface impoundment closure under this Section.

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

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

(2) The Agency is authorized to enter into such contracts and agreements as it may deem necessary to carry out the purposes of this Section. Neither the State, nor the Director, nor any State employee shall be liable for

any damages or injuries arising out of or resulting from any action taken under this Section.

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

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

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

(2) specify the minimum contents of CCR surface impoundment construction and operating permit applications, including the closure alternatives analysis

required under subsection (d);

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

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

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

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

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

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

impoundments;

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

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

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

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

(i) The owner of a CCR surface impoundment shall post all closure plans, permit applications, and supporting

documentation, as well as any Agency approval of the plans or applications on its publicly available website.

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

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

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

and

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

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

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

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

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

(l) The Coal Combustion Residual Surface Impoundment Financial Assurance Fund is created as a special fund in the State treasury. Any moneys forfeited to the State of Illinois from any performance bond or other security required under this Section shall be placed in the Coal Combustion Residual

Surface Impoundment Financial Assurance Fund and shall, upon approval by the Governor and the Director, be used by the Agency for the purposes for which such performance bond or other security was issued. The Coal Combustion Residual Surface Impoundment Financial Assurance Fund is not subject to the provisions of subsection (c) of Section 5 of the State Finance Act.

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

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

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