

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

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

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

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

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

16 (b) No person shall:

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

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

1 or standards adopted by the Board under this Section; ~~or~~

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

8 (4) construct, install, modify, or close a CCR surface
9 impoundment in accordance with a permit issued under this
10 Act without certifying to the Agency that all contractors,
11 subcontractors, and installers utilized to construct,
12 install, modify, or close a CCR surface impoundment are
13 participants in:

14 (A) a training program that is approved by and
15 registered with the United States Department of
16 Labor's Employment and Training Administration and
17 that includes instruction in erosion control and
18 environmental remediation; and

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

24 Nothing in this paragraph (4) shall be construed to
25 require providers of construction-related professional
26 services to participate in a training program approved by

1 and registered with the United States Department of
2 Labor's Employment and Training Administration.

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

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

18 (d) Before commencing closure of a CCR surface
19 impoundment, in accordance with Board rules, the owner of a
20 CCR surface impoundment must submit to the Agency for approval
21 a closure alternatives analysis that analyzes all closure
22 methods being considered and that otherwise satisfies all
23 closure requirements adopted by the Board under this Act.
24 Complete removal of CCR, as specified by the Board's rules,
25 from the CCR surface impoundment must be considered and
26 analyzed. Section 3.405 does not apply to the Board's rules

1 specifying complete removal of CCR. The selected closure
2 method must ensure compliance with regulations adopted by the
3 Board pursuant to this Section.

4 (e) Owners or operators of CCR surface impoundments who
5 have submitted a closure plan to the Agency before May 1, 2019,
6 and who have completed closure prior to 24 months after July
7 30, 2019 (the effective date of Public Act 101-171) ~~this~~
8 ~~amendatory Act of the 101st General Assembly~~ shall not be
9 required to obtain a construction permit for the surface
10 impoundment closure under this Section.

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

23 (1) The cost estimate for the post-closure care of a
24 CCR surface impoundment shall be calculated using a
25 30-year post-closure care period or such longer period as
26 may be approved by the Agency under Board or federal

1 rules.

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

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

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

24 (1) be at least as protective and comprehensive as the
25 federal regulations or amendments thereto promulgated by
26 the Administrator of the United States Environmental

1 Protection Agency in Subpart D of 40 CFR 257 governing CCR
2 surface impoundments;

3 (2) specify the minimum contents of CCR surface
4 impoundment construction and operating permit
5 applications, including the closure alternatives analysis
6 required under subsection (d);

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

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

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

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

25 (7) prescribe the type and amount of the performance
26 bonds or other securities required under subsection (f),

1 and the conditions under which the State is entitled to
2 collect moneys from such performance bonds or other
3 securities;

4 (8) specify a procedure to identify areas of
5 environmental justice concern in relation to CCR surface
6 impoundments;

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

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

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

24 (h) Any owner of a CCR surface impoundment that generates
25 CCR and sells or otherwise provides coal combustion byproducts
26 pursuant to Section 3.135 shall, every 12 months, post on its

1 publicly available website a report specifying the volume or
2 weight of CCR, in cubic yards or tons, that it sold or provided
3 during the past 12 months.

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

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

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

13 \$50,000 for each closed CCR surface impoundment;

14 and

15 \$75,000 for each CCR surface impoundment that have
16 not completed closure.

17 (2) Annual fees to the Agency, beginning on July 1,
18 2020, of:

19 \$25,000 for each CCR surface impoundment that has
20 not completed closure; and

21 \$15,000 for each CCR surface impoundment that has
22 completed closure, but has not completed post-closure
23 care.

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

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

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

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

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