



Rep. Rita Mayfield

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10200HB4358ham002

LRB102 23423 CPF 36556 a

1 AMENDMENT TO HOUSE BILL 4358

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 4358 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."