



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB1608

Introduced 2/1/2023, by Rep. Rita Mayfield

SYNOPSIS AS INTRODUCED:

415 ILCS 5/22.59
415 ILCS 5/22.59a new

Amends the Environmental Protection Act. Provides that owners and operators of CCR surface impoundments at electric generating plants that are bordering Lake Michigan shall close the CCR surface impoundment by removal by off-site disposal, pursuant to specified provisions and requirements. In additional provisions, requires an owner or operator to remove from his or her site, for off-site disposal, all CCR generated by a facility that is not disposed of, treated, stored, or abandoned in a CCR surface impoundment, and remediate all soil and groundwater impacted by that CCR, in accordance with specified requirements. Requires owners or operators to submit specified plans and reports to the Environmental Protection Agency. Provides that an owner or operator shall post with the Agency a performance bond or other security for the purpose of ensuring removal and remediation in accordance with the provisions. Provides that the Agency may enter into such contracts and agreements as it deems necessary to carry out the purposes of the provisions. Provides that neither the State, nor the Director of the Agency, nor any State employee shall be liable for any damages or injuries arising out of or resulting from any action taken under the provisions. Contains other provisions. Contains a severability provision. Effective immediately.

LRB103 00065 CPF 45065 b

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 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
17 has caused groundwater contamination and other forms of
18 pollution at active and inactive plants throughout this
19 State;

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

23 (5) meaningful participation of State residents,

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

9 (6) the State recognizes the critical need to
10 zealously guard and vigilantly protect the water quality
11 and public uses of public bodies of water throughout the
12 State, including Lake Michigan.

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

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

21 (b) No person shall:

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

1 with contaminants from other sources;

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

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

13 (4) construct, install, modify, or close a CCR surface
14 impoundment in accordance with a permit issued under this
15 Act without certifying to the Agency that all contractors,
16 subcontractors, and installers utilized to construct,
17 install, modify, or close a CCR surface impoundment are
18 participants in:

19 (A) 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 erosion control and
23 environmental remediation; and

24 (B) a training program that is approved by and
25 registered with the United States Department of
26 Labor's Employment and Training Administration and

1 that includes instruction in the operation of heavy
2 equipment and excavation.

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

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

18 (c) (Blank).

19 (d) Before commencing closure of a CCR surface
20 impoundment, in accordance with Board rules, the owner of a
21 CCR surface impoundment must submit to the Agency for approval
22 a closure alternatives analysis that analyzes all closure
23 methods being considered and that otherwise satisfies all
24 closure requirements adopted by the Board under this Act.
25 Complete removal of CCR, as specified by the Board's rules,
26 from the CCR surface impoundment must be considered and

1 analyzed. Section 3.405 does not apply to the Board's rules
2 specifying complete removal of CCR. The selected closure
3 method must ensure compliance with regulations adopted by the
4 Board pursuant to this Section.

5 (e) Owners or operators of CCR surface impoundments who
6 have submitted a closure plan to the Agency before May 1, 2019,
7 and who have completed closure prior to 24 months after July
8 30, 2019 (the effective date of Public Act 101-171) shall not
9 be 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 remediation of
19 releases from the CCR surface impoundment. The only acceptable
20 forms of financial assurance are: a trust fund, a surety bond
21 guaranteeing payment, a surety bond guaranteeing performance,
22 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) the Agency shall propose, and not later
20 than one year after receipt of the Agency's proposal the Board
21 shall adopt, rules under this Section. The Board shall not be
22 deemed in noncompliance with the rulemaking deadline due to
23 delays in adopting rules as a result of the Joint Commission on
24 Administrative Rules oversight process. The rules must, at a
25 minimum:

26 (1) be at least as protective and comprehensive as the

1 federal regulations or amendments thereto promulgated by
2 the Administrator of the United States Environmental
3 Protection Agency in Subpart D of 40 CFR 257 governing CCR
4 surface impoundments;

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

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

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

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

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

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

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

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

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

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

26 (h) Any owner of a CCR surface impoundment that generates

1 CCR and sells or otherwise provides coal combustion byproducts
2 pursuant to Section 3.135 shall, every 12 months, post on its
3 publicly available website a report specifying the volume or
4 weight of CCR, in cubic yards or tons, that it sold or provided
5 during the past 12 months.

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

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

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

15 \$50,000 for each closed CCR surface impoundment;

16 and

17 \$75,000 for each CCR surface impoundment that have
18 not completed closure.

19 (2) Annual fees to the Agency, beginning on July 1,
20 2020, of:

21 \$25,000 for each CCR surface impoundment that has
22 not completed closure; and

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

26 (k) All fees collected by the Agency under subsection (j)

1 shall be deposited into the Environmental Protection Permit
2 and Inspection Fund.

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

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

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

24 CCR in all CCR surface impoundments subject to this
25 subsection, including CCR surface impoundments for which an
26 adjusted standard has been sought pursuant to Section 28.1,

1 shall be closed by removal and off-site disposal, pursuant to
2 this Section, applicable Illinois Pollution Control Board
3 regulations, and the following provisions:

4 (1) CCR surface impoundments under this subsection are
5 not subject to the closure alternative analysis required
6 under subsection (d).

7 (2) Notwithstanding any other requirements of this
8 Section or Board rules or regulations, applications for
9 closure construction subject to this subsection shall be
10 submitted to the Agency within one year after the
11 effective date of this amendatory Act of the 103rd General
12 Assembly. Application requirements and permit issuance
13 procedures shall follow those adopted by the Illinois
14 Pollution Control Board under this Section.

15 (3) If the owner or operator of any CCR surface
16 impoundment subject to this subsection has submitted a
17 construction permit application to the Agency to close a
18 subject CCR surface impoundment by any method other than
19 removal under Part 845 of Title 35 of the Illinois
20 Administrative Code, the owner or operator shall submit an
21 amended construction permit application that complies with
22 the requirements of this Section within one year after the
23 effective date of this amendatory Act of the 103rd General
24 Assembly.

25 (4) Any permit issued by the Agency allowing a CCR
26 surface impoundment subject to this subsection to close in

1 place shall be declared void. The Agency shall not issue
2 any operating permit or construction permit allowing
3 closure in place to the owner or operator of any CCR
4 surface impoundment subject to this subsection.

5 (Source: P.A. 101-171, eff. 7-30-19; 102-16, eff. 6-17-21;
6 102-137, eff. 7-23-21; 102-309, eff. 8-6-21; 102-558, eff.
7 8-20-21; 102-662, eff. 9-15-21; 102-813, eff. 5-13-22.)

8 (415 ILCS 5/22.59a new)

9 Sec. 22.59a. Great Lakes CCR protection.

10 (a) The General Assembly finds that:

11 (1) The State has a long-standing policy to restore,
12 protect, and enhance the environment, and has a particular
13 interest in preserving the quality of Lake Michigan, which
14 serves as a drinking water source for millions of State
15 residents and provides irreplaceable recreational,
16 ecological, and economic value to Illinois.

17 (2) CCR generated by the electric generating industry
18 has contaminated, and continues to contaminate, Lake
19 Michigan, and CCR placed in unlined deposits, including
20 deposits outside of CCR surface impoundments as well as in
21 CCR surface impoundments, continues to threaten the
22 quality of Lake Michigan's water.

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

25 (b) This Section applies only to an owner or operator of a

1 facility that (i) generates or has generated CCR that is not
2 disposed of, treated, stored, or abandoned in a CCR surface
3 impoundment and (ii) is an electric generating plant located
4 within 4,000 feet of Lake Michigan.

5 (c) An owner or operator of a facility that is subject to
6 this Section shall remove from the owner's or operator's site,
7 for off-site disposal, all CCR generated by the facility that
8 is not disposed of, treated, stored, or abandoned in a CCR
9 surface impoundment, and remediate all soil and groundwater
10 impacted by that CCR, in accordance with the following:

11 (1) Within one year after the effective date of this
12 amendatory Act of the 103rd General Assembly, the owner or
13 operator shall conduct a site investigation and submit to
14 the Agency a site investigation report that identifies the
15 full extent of CCR at the site. The investigation and
16 report shall also identify the full extent of soil and
17 groundwater that, as a result of the CCR, exceeds the most
18 stringent remediation objectives adopted under Title XVII
19 of this Act.

20 (A) Within 5 days after submitting the report to
21 the Agency, the owner or operator shall post public
22 notice of the report's submission (i) on the owner or
23 operator's website, along with a copy of the report
24 for public viewing, and (ii) in a newspaper of general
25 distribution in the municipality where the applicable
26 electric generating plant is located. The notice shall

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

10 (B) Within 90 days after receipt of the site
11 investigation report, the Agency shall determine
12 whether the investigation and report complies with
13 this paragraph (1). In making its determination, the
14 Agency shall consider all public comments submitted
15 within 30 days after the date of the newspaper notice
16 required under subparagraph (A).

17 (C) If the Agency determines the investigation and
18 report complies with this paragraph (1) it shall
19 notify the owner or operator in writing of its
20 determination. The owner or operator shall then submit
21 a CCR removal and remediation plan in accordance with
22 paragraph (2).

23 (D) If the Agency determines the investigation or
24 report does not comply with this paragraph (1) it
25 shall notify the owner or operator in writing of its
26 determination and the reasons for the determination.

1 The owner or operator shall then have 6 months to (i)
2 perform additional investigation or correct any
3 deficiencies and (ii) submit an amended site
4 investigation report to the Agency, which shall be
5 subject to the same submission and review procedures
6 set forth in this paragraph (1).

7 (2) Within 6 months after the Agency's approval of the
8 site investigation report, the owner or operator shall
9 submit to the Agency a CCR removal and remediation plan
10 that will achieve the removal of all CCR at the site and
11 the remediation of all soil and groundwater that, as a
12 result of the CCR, exceeds the most stringent remediation
13 objectives adopted under Title XVII of this Act. The plan
14 shall include a schedule for completion of its major
15 milestones, along with the following:

16 (A) An analysis of the modes for transporting the
17 removed CCR off-site, including by rail, barge,
18 low-polluting trucks, or a combination of these
19 transportation modes.

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

22 (C) Within 5 days after submitting the plan to the
23 Agency, the owner or operator shall post public notice
24 of the plan's submission (i) on the owner or
25 operator's website, along with a copy of the plan for
26 public viewing, and (ii) in a newspaper of general

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

12 (D) Within 90 days after receipt of the plan, the
13 Agency shall determine whether the plan complies with
14 this paragraph (2). In making its determination, the
15 Agency shall consider all public comments submitted
16 within 30 days after the date of the newspaper notice
17 required under subparagraph (C).

18 (E) If the Agency determines the plan, with or
19 without Agency modifications, complies with paragraph
20 (2), it shall notify the owner or operator in writing
21 of its determination. The owner or operator shall then
22 proceed with implementation of the plan, including any
23 modifications by the Agency, and submission of a
24 removal and remediation report in accordance with
25 paragraph (3).

26 (F) If the Agency determines the investigation or

1 report does not comply with paragraph (2), 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 have 60 days to submit
5 an amended plan to the Agency, which shall be subject
6 to the same submission and review procedures set forth
7 in subparagraphs (C) and (D).

8 (3) In accordance with a schedule approved by the
9 Agency, the owner or operator shall implement the
10 remediation plan and provide the Agency with updates on
11 the plan's implementation. Upon completion of the plan,
12 the owner or operator shall submit a completion report to
13 the Agency.

14 (A) Within 5 days after submitting an update or
15 the completion report to the Agency on plan
16 implementation, the owner or operator shall post
17 public notice of the report's submission (i) on the
18 owner or operator's website, along with a copy of the
19 report for public viewing, and (ii) in a newspaper of
20 general distribution in the municipality where the
21 applicable electric generating plant is located. The
22 notice shall be provided in English and Spanish and
23 shall inform the public of their right to submit
24 comments on the report to the Agency within 30 days
25 after the date the notice is published in the
26 newspaper. The owner or operator shall also maintain a

1 copy of the report in a public repository in the
2 municipality where the applicable electric generating
3 plant is located for public viewing, which shall be
4 identified in the public notice.

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

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

18 (D) If the Agency determines that the required
19 removal and remediation is not complete, it shall
20 notify the owner or operator in writing of its
21 determination and the reasons for the determination.
22 The owner or operator shall then continue removal or
23 remediation, and submit reports to the Agency, in
24 accordance with a schedule established by the Agency.
25 Reports shall be subject to the same submission and
26 review procedures set forth in subparagraphs (A) and

1 (B). If necessary, the owner or operator may amend the
2 plan and submit it for review and approval in
3 accordance with paragraph (2).

4 (d) Except for the State, its agencies and institutions, a
5 unit of local government, or not-for-profit electric
6 cooperative as defined in Section 3.4 of the Electric Supplier
7 Act, an owner or operator shall post with the Agency a
8 performance bond or other security for the purpose of ensuring
9 removal and remediation in accordance with this Section. The
10 only acceptable forms of financial assurance are the forms of
11 financial assurance that are acceptable for CCR surface
12 impoundments under Section 22.59.

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

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

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

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