

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 the final  
18 placement and completion of the structural fill project or  
19 if the project becomes inactive for more than 90 days,  
20 unless infiltration is prevented by the material itself or  
21 other suitable cover material. CCB may be used under this  
22 item (8) only if the structural fill is located no less  
23 than 250 feet from any active or operating downgradient  
24 well being used as a residential or municipal potable water  
25 source.

26 Within 3 months after notification to the Agency under

1       item (C) of subsection (a-5) of this Section, the Agency  
2       must inspect the structural fill project to ensure that the  
3       cover requirements of this item (8) are satisfied for each  
4       project involving the use of coal combustion waste as  
5       structural fill.

6           (9) Mine subsidence, mine fire control, mine sealing,  
7       and mine reclamation.

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

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

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

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

1 specifically under a beneficial use determination as  
2 provided under this Section, or pavement base, parking lot  
3 base, or building base projects utilizing less than 10,000  
4 tons, flowable fill/grout projects utilizing less than  
5 1,000 cubic yards or other applications utilizing less than  
6 100 tons.

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

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

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

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

1 contaminant into the environment; the use will otherwise  
2 protect human health and safety and the environment; and the  
3 use constitutes a legitimate use of the coal-combustion waste  
4 as an ingredient or raw material that is an effective  
5 substitute for an analogous ingredient or raw material.

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

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

21 Any approval of a beneficial use under this subsection (b)  
22 shall become effective upon the date of the Agency's written  
23 decision and remain in effect for a period of 5 years. If an  
24 applicant desires to continue a beneficial use after the  
25 expiration of the 5-year period, the applicant must submit an  
26 application for renewal no later than 90 days prior to the

1 expiration. The beneficial use approval shall be automatically  
2 extended unless denied by the Agency in writing with the  
3 Agency's reasons for disapproval, or unless the Agency has  
4 requested an extension for review, in which case the use will  
5 continue to be allowed until an Agency determination is made.

6 Coal-combustion waste for which a beneficial use is  
7 approved pursuant to this subsection (b) shall be considered  
8 CCB during the effective period of the approval, and the  
9 continued approval upon renewal may not be denied by the Agency  
10 as long as it is used in accordance with the approval and any  
11 conditions. Any determination under this subsection (b) is  
12 subject to review under Section 40 of this Act.

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

24 The Board shall adopt rules establishing standards and  
25 procedures for the Agency's issuance of beneficial use  
26 determinations under this subsection (b). The Board rules may

1 also, but are not required to, include standards and procedures  
2 for the revocation of the beneficial use determinations. Prior  
3 to the effective date of Board rules adopted under this  
4 subsection (b), the Agency is authorized to make beneficial use  
5 determinations in accordance with this subsection (b).

6 Notwithstanding any other rulemaking authority that may  
7 exist, neither the Governor nor any agency or agency head under  
8 the jurisdiction of the Governor shall make or promulgate rules  
9 to implement or enforce the provisions of this amendatory Act  
10 of the 95th General Assembly. Nothing contained in this  
11 amendatory Act of the 95th General Assembly shall be  
12 interpreted to grant rulemaking authority under any other  
13 Illinois statute where such authority is not otherwise  
14 explicitly given. For the purposes of this paragraph, "rules"  
15 is given the meaning contained in Section 1-70 of the Illinois  
16 Administrative Procedure Act, and "agency" and "agency head"  
17 are given the meanings contained in Sections 1-20 and 1-25 of  
18 the Illinois Administrative Procedure Act to the extent that  
19 such definitions apply to agencies or agency heads under the  
20 jurisdiction of the Governor.

21 No later than January 1, 2009, the Governor, in  
22 coordination with the Agency and the Board, must propose rules  
23 to the General Assembly by filing them with the Clerk of the  
24 House and the Secretary of the Senate and request that the  
25 General Assembly authorize such rulemaking by law, enact those  
26 proposed rules into law, or take any other appropriate action

1 in the General Assembly's discretion. The proposed rules must  
2 concern the use of CCB under item (8) of subsection (a). The  
3 proposed rules must include specific guidelines for the use of  
4 CCB as structural fill and a site-approval process. The  
5 proposed rules must specify that agency approval is not  
6 required for a structural fill project if that project uses  
7 less than 10,000 tons of CCB material or if the fill material  
8 meets the ASTM D3987-85 standards for Class 1 Groundwater. The  
9 proposed rules for a site-approval process must include, along  
10 with other permits that may be required, (i) specific  
11 timeframes for Agency approval and (ii) informal consultation  
12 with the Department of Natural Resources on whether the  
13 structural fill project will harm any endangered species.

14 The Agency is authorized to prepare and distribute guidance  
15 documents relating to its administration of this Section.  
16 Guidance documents prepared under this subsection are not rules  
17 for the purposes of the Illinois Administrative Procedure Act.

18 (c) In addition to the other penalties and remedies  
19 provided in this Act, any person harmed by a violation of item  
20 (8) of subsection (a) of this Section may bring a civil action  
21 in the circuit court of the county of that person's residence  
22 for damages or other appropriate legal or equitable remedies  
23 against the violator.

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