



**Filed: 3/5/2008**

09500HB4172ham001

LRB095 14143 BDD 47701 a

1 AMENDMENT TO HOUSE BILL 4172

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 4172 by replacing  
3 everything after the enacting clause with the following:

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

1 precast/prestressed components; asphalt or cementious  
2 roofing products; plastic products including pipes and  
3 fittings; paints and metal alloys; kiln fired products  
4 including bricks, blocks, and tiles; abrasive media;  
5 gypsum wallboard; asphaltic concrete, or asphalt based  
6 paving material.

7 (3) CCB used (A) in accordance with the Illinois  
8 Department of Transportation ("IDOT") standard  
9 specifications and subsection (a-5) of this Section or (B)  
10 under the approval of the Department of Transportation for  
11 IDOT projects.

12 (4) Bottom ash used as antiskid material, athletic  
13 tracks, or foot paths.

14 (5) Use in the stabilization or modification of soils  
15 providing the CCB meets the IDOT specifications for soil  
16 modifiers.

17 (6) CCB used as a functionally equivalent substitute  
18 for agricultural lime as a soil conditioner.

19 (7) Bottom ash used in non-IDOT pavement sub-base or  
20 base, pipe bedding, or foundation backfill.

21 (8) Structural fill, when used in an engineered  
22 application or combined with cement, sand, or water to  
23 produce a controlled strength fill material and covered  
24 with 12 inches of soil, within 30 days after the final  
25 placement and completion of the structural fill project or  
26 if the project becomes inactive for more than 90 days,

1 unless infiltration is prevented by the material itself or  
2 other suitable cover material. CCB may be used under this  
3 item (8) only if the structural fill is located no less  
4 than 250 feet from any active or operating downgradient  
5 well being used as a residential or municipal potable water  
6 source.

7 Within 3 months after notification to the Agency under  
8 item (C) of subsection (a-5) of this Section, the Agency  
9 must inspect the structural fill project to ensure that the  
10 cover requirements of this item (8) are satisfied for each  
11 project involving the use of coal combustion waste as  
12 structural fill.

13 (9) Mine subsidence, mine fire control, mine sealing,  
14 and mine reclamation.

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

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

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

25 (C) Unless otherwise exempted, users of CCB for the  
26 purposes described in items (a) (3) (A) and (a) (7) through

1 (9) of this Section shall provide notification to the  
2 Agency for each project utilizing CCB documenting the  
3 quantity of CCB utilized and certification of compliance  
4 with conditions (A) and (B) of this subsection.  
5 Notification shall not be required for users of CCB for  
6 purposes described in items (a)(1), (a)(2), (a)(3)(B),  
7 (a)(4), (a)(5) and (a)(6) of this Section, or as required  
8 specifically under a beneficial use determination as  
9 provided under this Section, or pavement base, parking lot  
10 base, or building base projects utilizing less than 10,000  
11 tons, flowable fill/grout projects utilizing less than  
12 1,000 cubic yards or other applications utilizing less than  
13 100 tons.

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

18 (E) CCB is not to be accumulated speculatively. CCB is  
19 not accumulated speculatively if during the calendar year,  
20 the CCB used is equal to 75% of the CCB by weight or volume  
21 accumulated at the beginning of the period.

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

26 (b) To encourage and promote the utilization of CCB in

1 productive and beneficial applications, upon request by the  
2 applicant, the Agency shall make a written beneficial use  
3 determination that coal-combustion waste is CCB when used in a  
4 manner other than those uses specified in subsection (a) of  
5 this Section if the applicant demonstrates that use of the  
6 coal-combustion waste satisfies all of the following criteria:  
7 the use will not cause, threaten, or allow the discharge of any  
8 contaminant into the environment; the use will otherwise  
9 protect human health and safety and the environment; and the  
10 use constitutes a legitimate use of the coal-combustion waste  
11 as an ingredient or raw material that is an effective  
12 substitute for an analogous ingredient or raw material.

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

19 Within 90 days after the receipt of an application for a  
20 beneficial use determination under this subsection (b), the  
21 Agency shall, in writing, approve, disapprove, or approve with  
22 conditions the beneficial use. Any disapproval or approval with  
23 conditions shall include the Agency's reasons for the  
24 disapproval or conditions. Failure of the Agency to issue a  
25 decision within 90 days shall constitute disapproval of the  
26 beneficial use request. These beneficial use determinations

1 are subject to review under Section 40 of this Act.

2 Any approval of a beneficial use under this subsection (b)  
3 shall become effective upon the date of the Agency's written  
4 decision and remain in effect for a period of 5 years. If an  
5 applicant desires to continue a beneficial use after the  
6 expiration of the 5-year period, the applicant must submit an  
7 application for renewal no later than 90 days prior to the  
8 expiration. The beneficial use approval shall be automatically  
9 extended unless denied by the Agency in writing with the  
10 Agency's reasons for disapproval, or unless the Agency has  
11 requested an extension for review, in which case the use will  
12 continue to be allowed until an Agency determination is made.

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

20 Notwithstanding the other provisions of this subsection  
21 (b), written beneficial use determination applications for the  
22 use of CCB at sites governed by the federal Surface Mining  
23 Control and Reclamation Act of 1977 (P.L. 95-87) or the rules  
24 and regulations thereunder, or by any law or rule or regulation  
25 adopted by the State of Illinois pursuant thereto, shall be  
26 reviewed and approved by the Office of Mines and Minerals

1 within the Department of Natural Resources pursuant to 62 Ill.  
2 Adm. Code §§ 1700-1850. Further, appeals of those  
3 determinations shall be made pursuant to the Illinois  
4 Administrative Review Law.

5 The Board shall adopt rules establishing standards and  
6 procedures for the Agency's issuance of beneficial use  
7 determinations under this subsection (b). The Board rules may  
8 also, but are not required to, include standards and procedures  
9 for the revocation of the beneficial use determinations. Prior  
10 to the effective date of Board rules adopted under this  
11 subsection (b), the Agency is authorized to make beneficial use  
12 determinations in accordance with this subsection (b). No later  
13 than January 31, 2009, the Governor, in coordination with the  
14 Agency and the Board, must propose rules concerning the use of  
15 CCB under item (8) of subsection (a). These proposed rules must  
16 include specific guidelines for the use of CCB as structural  
17 fill and a site-approval process. Agency approval, however, is  
18 not required for structural fill projects if that project uses  
19 less than 10,000 tons of CCB material or if the fill material  
20 meets the ASTM D3987-85 standards for Class 1 Groundwater. The  
21 proposed rules for a site-approval process must include, along  
22 with other permits that may be required, (i) specific  
23 timeframes for Agency approval and (ii) informal consultation  
24 with the Department of Natural Resources on whether the  
25 structural fill project will harm any endangered species.  
26 Notwithstanding any other rulemaking authority that may exist,

1 neither the Governor nor any agency or agency head under the  
2 jurisdiction of the Governor has any authority to make or  
3 promulgate rules to implement or enforce the provisions of this  
4 amendatory Act of the 95th General Assembly. The Governor shall  
5 propose rules to the General Assembly by filing them with the  
6 Clerk of the House and the Secretary of the Senate and by  
7 requesting that the General Assembly authorize such rulemaking  
8 by law, enact those proposed rules into law, or take any other  
9 appropriate action in the General Assembly's discretion.  
10 Nothing contained in this amendatory Act of the 95th General  
11 Assembly shall be interpreted to grant rulemaking authority  
12 under any other Illinois statute where such authority is not  
13 otherwise explicitly given. For the purposes of this paragraph,  
14 "rules" is given the meaning contained in Section 1-70 of the  
15 Illinois Administrative Procedure Act, and "agency" and  
16 "agency head" are given the meanings contained in Sections 1-20  
17 and 1-25 of the Illinois Administrative Procedure Act to the  
18 extent that such definitions apply to agencies or agency heads  
19 under the jurisdiction of the Governor.

20 The Agency is authorized to prepare and distribute guidance  
21 documents relating to its administration of this Section.  
22 Guidance documents prepared under this subsection are not rules  
23 for the purposes of the Illinois Administrative Procedure Act.

24 (c) In addition to the other penalties and remedies  
25 provided in this Act, any person harmed by a violation of item  
26 (8) of subsection (a) of this Section may bring a civil action

1 in the circuit court of the county of that person's residence  
2 for damages or other appropriate legal or equitable remedies  
3 against the violator.

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