



Sen. Scott M. Bennett

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10100SB0671sam001

LRB101 04433 CPF 64667 a

1 AMENDMENT TO SENATE BILL 671

2 AMENDMENT NO. _____. Amend Senate Bill 671, 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 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 to
10 restore, protect, and enhance the environment, including
11 the purity of the air, land, and waters, including
12 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

1 pollution at active and inactive plants throughout this
2 State;

3 (4) poorly constructed and inadequately maintained CCR
4 surface impoundments have contributed to environmental
5 disasters outside of Illinois;

6 (5) the health effects of exposure to CCR have become
7 the subject of a number of studies;

8 (6) ~~(4)~~ environmental laws should be supplemented to
9 ensure consistent, responsible regulation of all existing
10 CCR surface impoundments; and

11 (7) ~~(5)~~ meaningful participation of State residents,
12 especially vulnerable populations who may be affected by
13 regulatory actions, is critical to ensure that
14 environmental justice considerations are incorporated in
15 the development of, decision-making related to, and
16 implementation of environmental laws and rulemaking that
17 protects and improves the well-being of communities in this
18 State that bear disproportionate burdens imposed by
19 environmental pollution.

20 Therefore, the purpose of this Section is to promote a
21 healthful environment, including clean water, air, and land,
22 meaningful public involvement, and the responsible disposal
23 and storage of coal combustion residuals, so as to protect
24 public health and to prevent pollution of the environment of
25 this State.

26 The provisions of this Section shall be liberally construed

1 to carry out the purposes of this Section.

2 (b) No person shall:

3 (1) Cause, threaten, ~~cause~~ or allow the release
4 ~~discharge~~ of any contaminants from a CCR ~~surface~~
5 ~~impoundment~~ into the environment so as to cause air, water,
6 or other pollution in Illinois, either alone or in
7 combination with contaminants from other sources, or so as
8 to violate, directly or indirectly, a violation of this Act
9 ~~Section~~ or any regulations or standards adopted by the
10 Board under this Act. Section, ~~either alone or in~~
11 ~~combination with contaminants from other sources,~~

12 (2) Construct ~~construct,~~ install, modify, operate, or
13 close any CCR surface impoundment without a permit granted
14 by the Agency, or so as to violate any conditions imposed
15 by such permit, any provision of this Act Section or any
16 regulations or standards adopted by the Board under this
17 Act. Section, ~~or~~

18 (3) (Blank). ~~cause or allow, directly or indirectly,~~
19 ~~the discharge, deposit, injection, dumping, spilling,~~
20 ~~leaking, or placing of any CCR upon the land in a place and~~
21 ~~manner so as to cause or tend to cause a violation this~~
22 ~~Section or any regulations or standards adopted by the~~
23 ~~Board under this Section.~~

24 (c) For purposes of this Section, a permit issued by the
25 Administrator of the United States Environmental Protection
26 Agency under Section 4005 of the federal Resource Conservation

1 and Recovery Act, shall be deemed to be a permit under this
2 Section and subsection (y) of Section 39.

3 (d) Before commencing closure of a CCR surface impoundment,
4 in accordance with Board rules, the owner of a CCR surface
5 impoundment must submit to the Agency for approval a closure
6 alternatives analysis that analyzes all closure methods being
7 considered and that otherwise satisfies all closure
8 requirements adopted by the Board under this Act. Complete
9 removal of CCR, as specified by the Board's rules, from the CCR
10 surface impoundment must be considered and analyzed. Removal,
11 as that term is defined in Section 3.405 of this Act, does not
12 apply to the Board's rules specifying complete removal of CCR.
13 The selected closure method must ensure compliance with
14 regulations adopted by the Board pursuant to this Section.

15 (e) Owners or operators of CCR surface impoundments who
16 have submitted a closure plan to the Agency before May 1, 2019,
17 and who have completed closure prior to 24 months after July
18 30, 2019 (the effective date of Public Act 101-171) ~~this~~
19 ~~amendatory Act of the 101st General Assembly~~ shall not be
20 required to obtain a construction permit for the surface
21 impoundment closure under this Section. Owners or operators of
22 CCR surface impoundments who have completed closure pursuant to
23 an Agency approved closure plan or Board site specific
24 rulemaking, but not post-closure care before July 30, 2019,
25 shall only be required to obtain a post-closure care permit or
26 other Agency approval as established by the Board pursuant to

1 this Section.

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

15 (1) The cost estimate for the post-closure care of a
16 CCR surface impoundment shall be calculated using a 30-year
17 post-closure care period or such longer period as may be
18 approved by the Agency under Board or federal rules.

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

25 (3) The Agency shall have the authority to approve or
26 disapprove any performance bond or other security posted

1 under this subsection. Any person whose performance bond or
2 other security is disapproved by the Agency may contest the
3 disapproval as a permit denial appeal pursuant to Section
4 40.

5 (4) If insurance is used as financial assurance it must
6 meet the following criteria:

7 (A) Insurance may only be used as financial
8 assurance if it is accompanied by:

9 (i) a surety bond or irrevocable letter of
10 credit covering the value of the total cost of
11 premiums over the life of the insurance policy,
12 plus 50% of that total cost; and

13 (ii) proof of a trust fund that shall receive
14 any forfeited funds from the surety bond or
15 irrevocable letter of credit under subdivision (i)
16 of this subparagraph (A) if the owner or operator
17 fails to pay insurance premiums.

18 (B) The life of the policy shall be the duration of
19 the closure and post-closure period, as well as any
20 period of remediation of release.

21 (C) The policy shall provide that insurance
22 premiums shall be paid no less than 2 years in advance
23 of the due date for that premium, except that the first
24 2 years of premiums shall be paid in bulk as a single
25 payment upon issuance of the policy. The owner or
26 operator of the CCR surface impoundment or the

1 third-party payer shall submit to the Agency proof of
2 payment of each premium within 2 weeks after making
3 payment.

4 (D) The face value amount of the policy for which
5 insurance is serving as financial assurance shall be at
6 least equal to all of the following that apply:

7 (i) the cost estimate for closure, if used as
8 financial assurance for closure;

9 (ii) the cost estimate for post-closure, if
10 used as financial assurance for post-closure; or

11 (iii) the cost estimate for remediation of
12 releases, if used as financial assurance for
13 remediation of releases.

14 When remediation of a release is required, within
15 60 days after the Agency's approval of the cost
16 estimate for that remediation the policy shall be
17 amended to cover that approved cost estimate or the
18 owner or operator of the CCR surface impoundment shall
19 obtain a separate policy covering the amount of the
20 approved cost estimate.

21 (E) The face value of the policy shall be updated
22 within 90 days after the Agency approves a revised cost
23 estimate. Cost estimates shall be updated:

24 (i) at least annually;

25 (ii) whenever there is a significant
26 modification to an approved plan for closure,

1 post-closure, or remediation of releases; and

2 (iii) upon request by the Agency.

3 (F) The policy shall guarantee that,
4 notwithstanding litigation:

5 (i) funds will be available without delay to
6 close, if used as financial assurance for closure;

7 (ii) funds will be available without delay to
8 perform any required post-closure care, if used as
9 financial assurance for post-closure; and

10 (iii) funds will be available without delay
11 for remediation of releases, if used as financial
12 assurance for remediation of releases.

13 (G) For insurance used as financial assurance for
14 closure, the policy shall guarantee that once closure
15 begins the insurer will be responsible for payout of
16 funds up to an amount equal to the face amount of the
17 policy, upon the direction of the Agency, to the party
18 or parties the Agency specifies.

19 (H) The policy shall provide that payment of
20 insurance premiums may be made by the insured or by any
21 third party, including, but not limited to, the trustee
22 of the trust fund specified under subdivision (ii) of
23 subparagraph (A) of this paragraph (4).

24 (I) The policy must not be terminated, canceled, or
25 suspended for any reason other than failure to pay a
26 premium.

1 (J) If nonpayment of premiums by the owner or
2 operator of the CCR surface impoundment risks
3 terminating, cancelling, or suspending the policy, the
4 insurer shall provide notice by certified mail to the
5 owner or operator, the trustee of the trust fund
6 specified under subdivision (ii) of subparagraph (A)
7 of this paragraph (4), and the Agency. Termination,
8 cancellation, or suspension shall not occur within 120
9 days after the date of receipt of the notice by the
10 owner or operator and the Agency, as evidenced by
11 return receipts.

12 (K) If nonpayment of premiums by the owner or
13 operator of the CCR surface impoundment risks
14 terminating, cancelling, or suspending the policy, and
15 after notice has been provided under subparagraph (J),
16 within 100 days of receiving that notice the owner or
17 operator shall acquire an acceptable substitute form
18 of financial assurance at least equal to the face value
19 of the policy. If the owner or operator fails to
20 acquire an acceptable substitute form of financial
21 assurance within the 100-day period, the surety bond or
22 irrevocable letter of credit specified under
23 subdivision (i) of subparagraph (A) of this paragraph
24 (4) shall be forfeited and the funds shall be directed
25 without delay, and in any event not more than 10 days
26 after the 100-day period, into the trust fund specified

1 under subdivision (ii) of subparagraph (A) of this
2 paragraph (4). Within 10 days of receipt of those funds
3 in the trust fund, the trustee of the fund shall use
4 the monies in the trust fund to pay any premiums that
5 are due or past due. Using the funds in the trust fund,
6 the trustee shall continue to pay the remaining
7 premiums for the life of the policy.

8 (L) The Board's rules required under subsection
9 (g) of this Section shall address, among other things,
10 how to ensure continued payment of premiums if the
11 trustee of the trust fund specified under subdivision
12 (ii) of subparagraph (A) of this paragraph (4) fails to
13 make timely payment of premiums.

14 (M) The insurer shall be licensed to conduct
15 business in Illinois and have at least an "A-" rating,
16 or its equivalent, from a recognized rating agency.

17 (N) In the event of a transfer of ownership of the
18 CCR surface impoundment, the policy shall contain a
19 provision requiring continued payment of premiums by
20 the insured at least until any successor owner or
21 operator of the CCR surface impoundment obtains, and
22 the Agency approves, acceptable substitute financial
23 assurance with a value of, at a minimum, the face value
24 of the policy.

25 Failure to pay the premium, without substitution of
26 alternative financial assurance at least equal to face

1 value of the policy within the time period specified in
2 subparagraph (K), shall constitute a violation of this Act.

3 (g) The Board shall adopt rules establishing construction
4 permit requirements, operating permit requirements, design
5 standards, reporting, financial assurance, and closure and
6 post-closure care permit requirements for CCR surface
7 impoundments. Not later than 8 months after July 30, 2019 (the
8 effective date of Public Act 101-171) ~~this amendatory Act of~~
9 ~~the 101st General Assembly~~ the Agency shall propose, and not
10 later than one year after receipt of the Agency's proposal the
11 Board shall adopt, rules under this Section. The rules must, at
12 a minimum:

13 (1) be at least as protective and comprehensive as the
14 federal regulations or amendments thereto promulgated by
15 the Administrator of the United States Environmental
16 Protection Agency in Subpart D of 40 CFR 257 governing CCR
17 surface impoundments;

18 (2) specify the minimum contents of CCR surface
19 impoundment construction, ~~and operating, and post-closure~~
20 care permit applications, including the closure
21 alternatives analysis required under subsection (d);

22 (3) specify which types of permits include
23 requirements for construction, operation, and
24 post-closure, as well as closure, ~~post-closure,~~
25 remediation, ~~and~~ and all other requirements applicable to CCR
26 surface impoundments;

1 (4) specify when permit applications for existing CCR
2 surface impoundments must be submitted, taking into
3 consideration whether the CCR surface impoundment must
4 close under the RCRA;

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

7 (6) specify meaningful public participation procedures
8 for the issuance of CCR surface impoundment construction
9 and operating permits, including, but not limited to,
10 public notice of the submission of permit applications, an
11 opportunity for the submission of public comments, an
12 opportunity for a public hearing prior to permit issuance,
13 and a summary and response of the comments prepared by the
14 Agency;

15 (7) prescribe the type and amount of the performance
16 bonds or other securities required under subsection (f),
17 and the conditions under which the State is entitled to
18 collect moneys from such performance bonds or other
19 securities;

20 (8) specify a procedure to identify areas of
21 environmental justice concern in relation to CCR surface
22 impoundments;

23 (9) specify a method to prioritize CCR surface
24 impoundments required to close under RCRA if not otherwise
25 specified by the United States Environmental Protection
26 Agency, so that the CCR surface impoundments with the

1 highest risk to public health and the environment, and
2 areas of environmental justice concern are given first
3 priority;

4 (10) define when complete removal of CCR is achieved
5 and specify the standards for responsible removal of CCR
6 from CCR surface impoundments, including, but not limited
7 to, dust controls and the protection of adjacent surface
8 water and groundwater; and

9 (11) describe the process and standards for
10 identifying a specific alternative source of groundwater
11 pollution when the owner or operator of the CCR surface
12 impoundment believes that groundwater contamination on the
13 site is not from the CCR surface impoundment.

14 (12) Specify that an owner or operator of a CCR surface
15 impoundment shall certify to the Agency that all
16 contractors, subcontractors, and installers utilized to
17 construct, install, modify, or close a CCR surface
18 impoundment in accordance with a permit issued under this
19 Act are participants in:

20 (i) a training program that is approved by and
21 registered with the United States Department of
22 Labor's Employment and Training Administration and
23 that includes instruction in erosion control and
24 environmental remediation, including, but not limited
25 to, a 40-hour hazardous waste worker training course
26 and a hazardous waste supervisor training course as

1 prescribed under 29 C.F.R. 1926.65; and

2 (ii) 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 the operation of heavy
6 equipment and excavation.

7 For purposes of this Section, "contractors,
8 subcontractors, and installers" shall not apply to
9 construction-related professional services.

10 "Construction-related professional services" includes, but is
11 not limited to, those services within the scope of: the
12 practice of architecture as defined in Section 4 of the
13 Illinois Architecture Practice Act of 1989; professional
14 engineering as defined in Section 4 of the Professional
15 Engineering Practice Act of 1989; the practice of a structural
16 engineer under the Structural Engineering Practice Act of 1989;
17 or land surveying under the Illinois Professional Land Surveyor
18 Act of 1989.

19 (h) Any owner of a CCR surface impoundment that generates
20 CCR and sells or otherwise provides coal combustion byproducts
21 pursuant to Section 3.135 of this Act shall, every 12 months,
22 post on its publicly available website a report specifying the
23 volume or weight of CCR, in cubic yards or tons, that it sold
24 or provided during the past 12 months.

25 (i) The owner of a CCR surface impoundment shall post all
26 closure plans, permit applications, and supporting

1 documentation, as well as any Agency approval of the plans or
2 applications on its publicly available website.

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

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

8 \$50,000 for each closed CCR surface impoundment;

9 and

10 \$75,000 for each CCR surface impoundment that have
11 not completed closure.

12 (2) Annual fees to the Agency, beginning on July 1,
13 2020, of:

14 \$25,000 for each CCR surface impoundment that has
15 not completed closure; and

16 \$15,000 for each CCR surface impoundment that has
17 completed closure, but has not completed post-closure
18 care.

19 (k) All fees collected by the Agency under subsection (j)
20 shall be deposited into the Environmental Protection Permit and
21 Inspection Fund.

22 (l) The Coal Combustion Residual Surface Impoundment
23 Financial Assurance Fund is created as a special fund in the
24 State treasury. Any moneys forfeited to the State of Illinois
25 from any performance bond or other security required under this
26 Section shall be placed in the Coal Combustion Residual Surface

1 Impoundment Financial Assurance Fund and shall, upon approval
2 by the Governor and the Director, be used by the Agency for the
3 purposes for which such performance bond or other security was
4 issued. The Coal Combustion Residual Surface Impoundment
5 Financial Assurance Fund is not subject to the provisions of
6 subsection (c) of Section 5 of the State Finance Act.

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

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

14 Section 99. Effective date. This Act takes effect upon
15 becoming law."