

HOUSE BILL No. 1335

DIGEST OF INTRODUCED BILL

Citations Affected: IC 13-11-2; IC 13-15-3-3; IC 13-19-3-3; IC 13-20-26.

Synopsis: Closure of coal combustion residual impoundments. Requires the owner or operator of a coal combustion residuals (CCR) surface impoundment: (1) that is located in a 500 year flood zone, has caused a statistically significant increase in groundwater contamination, or does not have a composite liner that meets certain requirements; or (2) that is otherwise subject to a federal or state closure requirement; to remove all CCR from the CCR surface impoundment, return the site of the CCR surface impoundment to a nonerosive and stable condition, and either transfer the CCR for disposal in a landfill that meets certain requirements or put the CCR to an encapsulated beneficial use. Requires that the CCR be put to an encapsulated beneficial use whenever possible. Requires the owner or operator of a CCR surface impoundment to monitor for dust problems during removal of the CCR from the surface impoundment and requires the use of dust controls in the removal, transfer, and disposal of the CCR to minimize dust pollution. Requires the owner or operator of a CCR surface impoundment from which the CCR are being removed, in consultation with local government officials, to develop a plan for transporting the CCR after it is removed from the surface impoundment. Prohibits the department of environmental management (department) from approving a plan for closure of a CCR surface impoundment that does not meet these requirements. Requires the department to hold a public hearing on the approval or denial of a plan for the closure of a CCR surface impoundment.

Effective: July 1, 2022.

Boy

January 11, 2022, read first time and referred to Committee on Environmental Affairs.



Second Regular Session of the 122nd General Assembly (2022)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2021 Regular Session of the General Assembly.

HOUSE BILL No. 1335

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 13-11-2-23.6 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2022]: **Sec. 23.6. "CCR surface**
4 **impoundment"**, for purposes of IC 13-15-3-3 and IC 13-20-26, has
5 **the meaning set forth in IC 13-20-26-2.**

6 SECTION 2. IC 13-11-2-30.4 IS ADDED TO THE INDIANA
7 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2022]: **Sec. 30.4. "Closure"**, for purposes of
9 **IC 13-19-3-3 and 13-20-26, has the meaning set forth in**
10 **IC 13-20-26-3.**

11 SECTION 3. IC 13-11-2-30.8, AS AMENDED BY P.L.100-2021,
12 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 JULY 1, 2022]: **Sec. 30.8. "Coal combustion residuals"**, for purposes
14 of IC 13-15-1-3, **and IC 13-19-3-3, and IC 13-20-26**, has the meaning
15 set forth in IC 13-19-3-3(a).

16 SECTION 4. IC 13-11-2-66.8 IS ADDED TO THE INDIANA
17 CODE AS A **NEW** SECTION TO READ AS FOLLOWS



1 [EFFECTIVE JULY 1, 2022]: **Sec. 66.8. "Encapsulated beneficial**
 2 **use", for purposes of IC 13-20-26, has the meaning set forth in**
 3 **IC 13-20-26-5.**

4 SECTION 5. IC 13-11-2-77.8, AS ADDED BY P.L.100-2021,
 5 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2022]: Sec. 77.8. "Federal CCR rule", for purposes of
 7 IC 13-19-3 **and IC 13-20-26**, has the meaning set forth in
 8 IC 13-19-3-3(b).

9 SECTION 6. IC 13-15-3-3 IS AMENDED TO READ AS
 10 FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 3. (a) A public hearing
 11 shall be held on the question of:

- 12 (1) the issuance of an original or renewal permit for a hazardous
 13 waste disposal facility under IC 13-22-3; ~~or~~
 14 (2) the issuance of an original permit for a solid waste disposal
 15 facility or a solid waste incinerator regulated under IC 13-20-8; **or**
 16 **(3) the approval or denial of a closure or postclosure plan for**
 17 **a CCR surface impoundment;**

18 as provided in subsection (b).

19 (b) A public hearing shall be held under subsection (a) upon:

- 20 (1) the request of the applicant;
 21 (2) the filing of a petition requesting a public hearing that is
 22 signed by one hundred (100) adult individuals who:
 23 (A) reside in the county where the proposed or existing facility
 24 is or is to be located; or
 25 (B) own real property within one (1) mile of the site of the
 26 proposed or existing facility; or
 27 (3) the motion of the commissioner.

28 (c) The public hearing authorized by this section does not constitute
 29 an agency action under IC 4-21.5.

30 **(d) A public hearing shall be held under subsection (a):**

- 31 **(1) at a time that will allow for the greatest possible**
 32 **participation of the community; and**
 33 **(2) at a location as near as possible to the proposed or existing**
 34 **facility or site that is the subject of the hearing.**

35 SECTION 7. IC 13-19-3-3, AS AMENDED BY P.L.165-2021,
 36 SECTION 145, IS AMENDED TO READ AS FOLLOWS
 37 [EFFECTIVE JULY 1, 2022]: Sec. 3. (a) As used in this section, "coal
 38 combustion residuals" means fly ash, bottom ash, boiler slag, and flue
 39 gas desulfurization materials generated from burning coal for the
 40 purpose of generating electricity by electric utilities and independent
 41 power producers.

42 (b) As used in this section, "federal CCR rule" refers to 40 CFR 257,



1 Subpart D, the federal standards for the disposal of coal combustion
2 residuals in landfills and surface impoundments.

3 (c) The board may adopt rules under section 1(1) of this chapter that
4 are consistent with the regulations of the United States Environmental
5 Protection Agency concerning standards for the disposal of coal
6 combustion residuals in landfills and surface impoundments, as set
7 forth in the federal CCR rule.

8 (d) The department shall do the following:

9 (1) Establish a state permit program under Section 2301 of the
10 federal Water Infrastructure Improvements for the Nation Act (42
11 U.S.C. 6945(d)) for the implementation in Indiana of the federal
12 CCR rule.

13 (2) Submit to the administrator of the United States
14 Environmental Protection Agency under 42 U.S.C. 6945(d)(1)(A)
15 evidence of the state permit program.

16 (3) Take other necessary or appropriate actions to obtain approval
17 of the state permit program.

18 (e) Not later than May 15, 2021, the department shall notify the
19 United States Environmental Protection Agency of its intention to
20 establish a state permit program described in subsection (d)(1) and to
21 seek approval of the state permit program under 42 U.S.C. 6945(d)(1).

22 (f) Under IC 4-22-2 and IC 13-14-9:

23 (1) the department shall initiate rulemaking for the establishment
24 of the state permit program not more than sixty (60) days after the
25 effective date of the SECTION of Senate Enrolled Act 271-2021
26 amending this section; and

27 (2) the board shall adopt a final rule for the establishment of the
28 state permit program not more than sixteen (16) months after
29 initiation of the rulemaking under subdivision (1).

30 (g) The state permit program established under this section must not
31 establish requirements for any surface impoundment of coal
32 combustion residuals unless and until the state permit program is
33 approved by the administrator of the United States Environmental
34 Protection Agency under 42 U.S.C. 6945(d)(1).

35 (h) The definitions set forth in Section 257.53 of the federal CCR
36 rule, as in effect January 1, 2021, apply throughout subsection (i).

37 (i) The department shall charge the following fees under the state
38 permit program established under this section:

39 (1) An initial one (1) time permit fee of twenty thousand five
40 hundred dollars (\$20,500) for each surface impoundment of coal
41 combustion residuals regulated under the state permit program.

42 (2) An annual fee of twenty thousand five hundred dollars



1 (\$20,500) for each surface impoundment of coal combustion
 2 residuals regulated under the state permit program that has not
 3 completed closure in accordance with Section 257.102 of the
 4 federal CCR rule. The duty to pay the fee established by this
 5 subdivision does not apply on an annual basis until three hundred
 6 sixty-five (365) days after the initial one (1) time permit fee
 7 established by subdivision (1) has been assessed.

8 (3) An annual fee of ten thousand dollars (\$10,000) for each
 9 surface impoundment of coal combustion residuals regulated
 10 under the state permit program that has been closed and for which
 11 post-closure care has been initiated and is still required in
 12 accordance with Section 257.104 of the federal CCR rule. The
 13 duty to pay the fee established by this subdivision does not apply
 14 on an annual basis until three hundred sixty-five (365) days after
 15 the initial one (1) time permit fee established by subdivision (1)
 16 has been assessed.

17 Fees collected under this subsection shall be deposited in the CCR
 18 program fund established by section 3.2 of this chapter.

19 (j) Not later than July 1, 2027, and before the end of each
 20 succeeding period of five (5) years, the board shall review the:

21 (1) costs to the department of operating the state permit program
 22 established under this section; and

23 (2) revenue from the fees charged under subsection (i);

24 as provided in IC 13-16-1-4. If the board determines that the revenue
 25 described in subdivision (2) is inadequate or excessive in relation to the
 26 costs described in subdivision (1), the board shall, under IC 13-16-1-2,
 27 change the amount of one (1) or more of the fees established under
 28 subsection (i).

29 (k) Upon the effective date that the board adopts rules to implement
 30 the federal CCR rule and subject to subsection (i), annual fees for CCR
 31 landfills that were previously regulated as restricted waste sites shall
 32 be deposited in the CCR program fund established by section 3.2 of
 33 this chapter.

34 **(l) After June 30, 2022, the department may not approve a plan
 35 for closure of a CCR surface impoundment prepared under:**

36 **(1) the federal CCR rule; or**

37 **(2) state administrative rules;**

38 **unless the closure plan provides for the disposal or encapsulated
 39 beneficial use of the coal combustion residuals in compliance with
 40 IC 13-20-26.**

41 SECTION 8. IC 13-20-26 IS ADDED TO THE INDIANA CODE
 42 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2022]:

2 **Chapter 26. Coal Combustion Residuals**

3 **Sec. 1. This chapter does not apply to a CCR surface**
 4 **impoundment for which the department approves a closure plan**
 5 **before July 1, 2022.**

6 **Sec. 2. (a) As used in this chapter, "CCR surface impoundment"**
 7 **means a topographic depression, excavation, or diked area that:**

8 **(1) is primarily formed from earthen materials or coal**
 9 **combustion residuals; and**

10 **(2) is designed to hold accumulated coal combustion residuals**
 11 **in the form of liquid wastes, wastes containing free liquids, or**
 12 **sludges.**

13 **(b) The term includes the following:**

14 **(1) An impoundment described in subsection (a) that is dry**
 15 **because the deposited liquid has evaporated, volatilized, or**
 16 **leached.**

17 **(2) An impoundment described in subsection (a) that is wet**
 18 **with exposed liquid.**

19 **(3) A lagoon, pond, aeration pit, settling pond, tailings pond,**
 20 **or sludge pit that holds accumulated coal combustion**
 21 **residuals.**

22 **(4) An impoundment described in subsection (a) that was**
 23 **covered with soil after coal combustion residuals were last**
 24 **deposited in it.**

25 **Sec. 3. As used in this chapter, "closure" means the closure of**
 26 **a CCR surface impoundment in compliance with:**

27 **(1) 40 CFR 257.102; or**

28 **(2) a state rule that is at least as protective as the federal CCR**
 29 **rule.**

30 **Sec. 4. As used in this chapter, "coal combustion residuals" has**
 31 **the meaning set forth in IC 13-19-3-3(a).**

32 **Sec. 5. (a) As used in this chapter, "encapsulated beneficial use"**
 33 **means a beneficial use of coal combustion residuals that binds the**
 34 **coal combustion residuals into a solid matrix and minimizes the**
 35 **mobilization into the surrounding environment.**

36 **(b) The term includes the following uses of coal combustion**
 37 **residuals:**

38 **(1) As filler or lightweight aggregate in concrete.**

39 **(2) As a replacement for the cementitious components in**
 40 **concrete or bricks.**

41 **(3) As a raw material used in the production of the**
 42 **cementitious components of concrete or bricks.**



1 (4) As a filler in plastics, rubber, and similar products.

2 (5) As a raw material used in the production of wallboard.

3 Sec. 6. (a) Whenever possible, coal combustion residuals shall be
4 put to an encapsulated beneficial use to do the following:

5 (1) Help stimulate local economies.

6 (2) Offset closure and clean-up costs.

7 (3) Minimize future risk.

8 (b) When conducting the closure or clean-up of a CCR surface
9 impoundment, the owner or operator of the CCR surface
10 impoundment shall:

11 (1) identify options for using local workers, workers of color,
12 and previously incarcerated workers;

13 (2) consult with the department of workforce development
14 and labor organizations regarding opportunities to advance
15 workforce goals, including the furtherance of apprenticeship
16 and other workforce training programs that may be used to
17 develop the local workforce; and

18 (3) prioritize hiring local workers, workers of color, and
19 previously incarcerated workers.

20 (c) An owner or operator of a public utility (as defined in
21 IC 8-1-2-1(a)(2)) may not recover from ratepayers any costs
22 related to the closure of a CCR surface impoundment that has
23 caused a statistically significant increase over background levels of
24 any of the groundwater constituents listed in Appendix III to 40
25 CFR 257.95.

26 Sec. 7. (a) This section applies to a CCR surface impoundment:

27 (1) that:

28 (A) is located partially or entirely in a five hundred (500)
29 year flood zone, according to the most current applicable
30 Federal Emergency Management Agency flood map;

31 (B) has caused a statistically significant increase over
32 background levels of any of the groundwater constituents
33 listed in Appendix III to 40 CFR 257.95; or

34 (C) does not have a composite liner that meets the
35 requirements set forth in 40 CFR 257.70(b); or

36 (2) the closure of which is required under:

37 (A) the federal CCR rule; or

38 (B) a state rule that is at least as protective as the federal
39 CCR rule.

40 (b) The owner or operator of a CCR surface impoundment
41 described in subsection (a) shall:

42 (1) remove all coal combustion residuals from the CCR



- 1 surface impoundment;
- 2 (2) return the site of the CCR surface impoundment to a
- 3 nonerosive and stable condition; and
- 4 (3) either:
- 5 (A) transfer the coal combustion residuals for disposal in
- 6 a coal combustion residuals landfill that meets the
- 7 requirements set forth in subsection (c); or
- 8 (B) put the coal combustion residuals to an encapsulated
- 9 beneficial use.
- 10 (c) Coal combustion residuals that are removed from a CCR
- 11 surface impoundment and transferred for disposal under
- 12 subsection (b)(3)(A) shall be disposed of in a landfill that:
- 13 (1) is located on high ground that:
- 14 (A) is outside the five hundred (500) year flood zone,
- 15 according to the most current applicable Federal
- 16 Emergency Management Agency flood map; and
- 17 (B) is not in or near a low income community or a
- 18 community of color; and
- 19 (2) is designed with:
- 20 (A) a closure cap system; and
- 21 (B) a leachate collection and removal system and a
- 22 composite liner system that meet the design criteria set
- 23 forth in 40 CFR 257.70.
- 24 Sec. 8. (a) Dust controls shall be used in the removal, transfer,
- 25 and disposal of coal combustion residuals under section 7 of this
- 26 chapter to minimize dust pollution. The dust controls used under
- 27 this subsection may include the following:
- 28 (1) Transporting coal combustion residuals in sift-proof
- 29 vehicles.
- 30 (2) Truck washing, including tire washing upon leaving the
- 31 facility.
- 32 (3) Limiting drop distances.
- 33 (4) Watering.
- 34 (5) Using chemical dust suppressants.
- 35 (b) During the removal of coal combustion residuals from a
- 36 CCR surface impoundment, the owner or operator of the CCR
- 37 surface impoundment shall monitor for dust problems from the
- 38 coal combustion residuals by providing the following:
- 39 (1) Chest monitors for workers.
- 40 (2) Air monitors for fine particulate upwind and downwind of
- 41 the active area of excavation.
- 42 (3) Air monitors along the transportation route if the coal



1 **combustion residuals are transported offsite.**

2 **Sec. 9. (a) An owner or operator of a CCR surface**
3 **impoundment from which coal combustion residuals are being**
4 **removed under section 7 of this chapter shall develop a**
5 **transportation plan in consultation with appropriate officials of:**

6 **(1) the county and any city or town in which the CCR surface**
7 **impoundment is located; and**

8 **(2) every county, city, or town through which the**
9 **transportation route passes.**

10 **(b) The transportation plan developed under this section must**
11 **minimize the adverse effects of the transportation of the coal**
12 **combustion residuals on property owners and nearby communities.**

13 **The transportation plan must include:**

14 **(1) the use of alternative transportation options, including rail**
15 **and barge transport, if feasible and necessary to meet the**
16 **applicable closure deadline;**

17 **(2) plans for any transportation by truck, including:**

18 **(A) the frequency of truck travel;**

19 **(B) the route of truck travel; and**

20 **(C) measures to ensure safety, minimize noise and traffic**
21 **congestion, and control air pollution and fugitive dust; and**

22 **(3) plans for worker training concerning the materials**
23 **contained in coal combustion residuals and safe handling of**
24 **those materials.**

25 **(c) When the transportation plan developed under this section**
26 **is completed, the owner or operator of the CCR surface**
27 **impoundment shall post the plan on a publicly accessible Internet**
28 **web site.**

