

HOUSE BILL No. 1404

DIGEST OF INTRODUCED BILL

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

Synopsis: Use of coal combustion residuals. Removes the definition of "coal combustion residuals" from its current location and relocates it to the comprehensive definitions chapter of the environmental law title of the Indiana Code. Defines "structural fill" as a material that is free of rocks and organic matter and, because it is very stable, can be used in construction to create a base or foundation for a structure. Prohibits the use of coal combustion residuals as structural fill unless the coal combustion residuals are fully encapsulated in cement or concrete. Makes a corresponding amendment in a provision prohibiting the environmental rules board from adopting a rule prohibiting the use of coal combustion residuals as structural fill or as a base in road construction.

Effective: July 1, 2024.

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January 11, 2024, read first time and referred to Committee on Environmental Affairs.



Second Regular Session of the 123rd General Assembly (2024)

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 2023 Regular Session of the General Assembly.

HOUSE BILL No. 1404

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 13-11-2-30.8, AS AMENDED BY P.L.100-2021,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2024]: Sec. 30.8. "Coal combustion residuals", for purposes
4 of **this chapter**, IC 13-15-1-3, and ~~IC 13-19-3-3~~, ~~has the meaning set~~
5 ~~forth in IC 13-19-3-3(a)~~. **IC 13-19-3**, **means fly ash, bottom ash,**
6 **boiler slag, and flue gas desulfurization materials generated from**
7 **burning coal for the purpose of generating electricity by electric**
8 **utilities and independent power producers.**
9 SECTION 2. IC 13-11-2-133, AS AMENDED BY P.L.126-2014,
10 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
11 JULY 1, 2024]: Sec. 133. (a) "Municipal waste", for purposes of:
12 (1) IC 13-20-4;
13 (2) IC 13-20-6;
14 (3) IC 13-20-21;
15 (4) IC 13-20-23;
16 (5) IC 13-20.5-10;
17 (6) IC 13-22-1 through IC 13-22-8; and



(7) IC 13-22-13 through IC 13-22-14;
means any garbage, refuse, industrial lunchroom or office waste, and other similar material resulting from the operation of residential, municipal, commercial, or institutional establishments and community activities.

(b) The term does not include the following:

(1) Hazardous waste regulated under:

(A) IC 13-22-1 through IC 13-22-8 and IC 13-22-13 through IC 13-22-14; or

(B) the federal Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), as in effect on January 1, 1990.

(2) Infectious waste (as defined in IC 16-41-16-4).

(3) ~~Wastes that result from the combustion of Coal and that are referred to in IC 13-19-3-3.~~ **combustion residuals, as defined in section 30.8 of this chapter.**

(4) Materials that are being transported to a facility for reprocessing or reuse.

(c) As used in subsection (b)(4), "reprocessing or reuse" does not include either of the following:

(1) Incineration.

(2) Placement in a landfill.

(d) "Municipal waste", for purposes of IC 13-20-25, has the meaning set forth in IC 13-20-25-3.

SECTION 3. IC 13-11-2-224.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: **Sec. 224.3. "Structural fill", for purposes of IC 13-19-3-3.3, has the meaning set forth in IC 13-19-3-3.3(a).**

SECTION 4. IC 13-19-3-3, AS AMENDED BY P.L.249-2023, SECTION 68, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 3. (a) As used in this ~~section and section 3-1 of this chapter~~, "coal combustion residuals" ~~means fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers.~~ **has the meaning set forth in IC 13-11-2-30.8.**

(b) The following definitions apply throughout this section:

(1) "Federal CCR rule" refers to 40 CFR 257, Subpart D, the federal standards for the disposal of coal combustion residuals in landfills and surface impoundments.

(2) "Legacy generation resource" means an electric generating facility that is directly or indirectly owned by a corporation that



was originally formed for the purpose of providing power to the federal government for use in the nation's defense or in furtherance of national interests. The term includes the Ohio Valley Electric Corporation.

(c) The board shall adopt rules under section 1(a)(1) of this chapter concerning coal combustion residuals. The rules adopted under this subsection:

(1) shall be consistent with the regulations of the United States Environmental Protection Agency concerning standards for the disposal of coal combustion residuals in landfills and surface impoundments, as set forth in the federal CCR rule;

(2) shall not impose a restriction or requirement that is more stringent than the corresponding restriction or requirement imposed under the federal CCR rule; and

(3) shall not impose a restriction or requirement that is not imposed by the federal CCR rule.

(d) The department shall do the following:

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

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

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

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

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

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

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

(g) The state permit program established under this section must not establish requirements for any surface impoundment of coal combustion residuals unless and until the state permit program is approved by the administrator of the United States Environmental



1 Protection Agency under 42 U.S.C. 6945(d)(1). The authority of the
 2 department to establish requirements under the state permit program
 3 established under this section is the only authority the department has
 4 to establish requirements for a surface impoundment of coal
 5 combustion residuals located on the grounds of a legacy generation
 6 resource.

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

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

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

14 (2) An annual fee of twenty thousand five hundred dollars
 15 (\$20,500) for each surface impoundment of coal combustion
 16 residuals regulated under the state permit program that has not
 17 completed closure in accordance with Section 257.102 of the
 18 federal CCR rule. The duty to pay the fee established by this
 19 subdivision does not apply on an annual basis until three hundred
 20 sixty-five (365) days after the initial one (1) time permit fee
 21 established by subdivision (1) has been assessed.

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

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

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

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

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

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



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

SECTION 5. IC 13-19-3-3.1, AS ADDED BY P.L.120-2022, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 3.1. Except as provided in section 3(c) of this chapter, the rules adopted under section 1(a)(1) of this chapter may not regulate the following:

(1) The disposal of waste indigenous to the coal mining process and coal combustion residuals if the material:

(A) is not included in the definition of hazardous waste or is exempt from regulation as a hazardous waste under 42 U.S.C. 6921; and

(B) is disposed of at a facility regulated under IC 14-34.

(2) The use of coal combustion residuals for the following:

(A) The extraction or recovery of materials and compounds contained within the coal combustion residuals.

(B) Bottom ash as an antiskid material.

(C) Raw material for manufacturing another product.

(D) Mine subsidence, mine fire control, and mine sealing.

(E) Structural fill ~~when combined with~~ **if the coal combustion residuals are fully encapsulated in cement sand, or water to produce a controlled strength fill material, or concrete.**

(F) A base in road construction **if the coal combustion residuals are fully encapsulated in cement or concrete.**

(G) Cover for coal processing waste disposal locations to inhibit infiltration at surface and underground mines subject to IC 14-34, so long as a demonstration is made in concurrence with the department of natural resources that the materials and methods to be employed are appropriate for the intended use.

(H) Providing buffering or enhancing structural integrity for refuse piles at surface and underground mines subject to IC 14-34, so long as a demonstration is made in concurrence with the department of natural resources that the materials and methods to be employed are appropriate for the intended use.

(I) Agricultural applications, when applied using appropriate agronomic amounts to improve crop or vegetative production.

SECTION 6. IC 13-19-3-3.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 3.3. (a) As used in this section, "structural fill" means



1 material that is free of rocks and organic matter and, because it is
2 very stable, can be used in construction, as in creating a base or
3 foundation for a structure.

4 (b) Coal combustion residuals shall not be used as structural fill
5 unless they are fully encapsulated in cement or concrete.

