

SENATE BILL No. 367

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1-2-48; IC 13-11-2-61.8; IC 13-19-3-3.

Synopsis: Disposal of coal combustion residuals. Provides that the rules of the environmental rules board may not allow coal combustion residuals produced by the burning of coal to generate electric power (CCR) to be disposed of if, after the disposal: (1) any of the CCR or any portion of the disposal structure, landfill, or impoundment in which the CCR would be disposed of would be within a 500 year flood zone; (2) any portion of the CCR would be in contact with ground water during any portion of the year; or (3) there would be potential for migration of the hazardous constituents of the CCR into the uppermost aquifer. Prohibits the department of environmental management from approving a plan for closure of a disposal facility for CCR located at the site where the CCR were generated if: (1) any portion of the disposal structure, landfill, or impoundment at the site is within a 500 year flood zone; (2) any portion of the CCR disposed of at the site would be in contact with ground water during any portion of the year; (3) there has been documented migration of the hazardous constituents of the CCR into the uppermost aquifer at the site; (4) there is potential for migration of the hazardous constituents of the CCR into the uppermost aquifer at the site; or (5) the impoundment that would be used for disposal of the CCR at the site does not have a liner compliant with federal liner design criteria or is structurally unstable. Requires the Indiana utility regulatory commission (IURC) to review an electric utility's plan for closure of its CCR surface impoundment and provides that the IURC must require the utility to provide an assessment of the potential cost of remediating ground water contamination resulting from the surface impoundment. Permits the IURC to allow the utility to recover the costs of closing its surface impoundment if the closure plan is in the public interest and the costs of the plan are not excessive.

Effective: December 1, 2020 (retroactive); July 1, 2021.

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January 11, 2021, read first time and referred to Committee on Environmental Affairs.



First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

SENATE BILL No. 367

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 8-1-2-48 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2021]: Sec. 48. (a) The commission shall
3 inquire into the management of the business of all public utilities, and
4 shall keep itself informed as to the manner and method in which the
5 same is conducted and shall have the right to obtain from any public
6 utility all necessary information to enable the commission to perform
7 its duties. If, in its inquiry into the management of any public utility,
8 the commission finds that the amount paid for the services of its
9 officers, employees, or any of them, is excessive, or that the number of
10 officers or persons employed by such utility is not justified by the
11 actual needs of the utility, or that any other item of expense is being
12 incurred by the utility which is either unnecessary or excessive, the
13 commission shall designate such item or items, and such item or items
14 so designated, or such parts thereof as the commission may deem
15 unnecessary or excessive, shall not be taken into consideration in
16 determining and fixing the rates which such utility is permitted to
17 charge for the service which it renders.



(b) For purposes of IC 8-1-2, IC 8-1-8.5, IC 8-1-8.7, IC 8-1-8.8, and IC 8-1-27, wages paid to an independent contractor of a utility for construction or maintenance performed for the utility shall not be found to be excessive merely because the wages are those normally paid for work of the same type and quality in the labor market in which the work for the utility is being performed.

(c) In carrying out its duties and powers under subsection (a) with regard to any utility which sells or generates electricity, the commission may also inquire into or audit a utility's powerplant efficiency and system reliability.

(d) In carrying out its duties and powers under subsection (a) with regard to a utility which sells or generates electricity, the commission:

(1) shall review the utility's plan for closure of the electric utility's surface impoundment of coal combustion residuals and, if applicable, the disposal of the coal combustion residuals under IC 13-19-3-3(e) at a site other than the site where the coal combustion residuals were generated;

(2) shall require the utility to provide an assessment of the potential cost of remediating ground water contamination resulting from the utility's surface impoundment of coal combustion residuals;

(3) may consider the economic benefits of alternative approaches to disposing of the coal combustion residuals that might be included in a plan described in subdivision (1), including encapsulating the coal combustion residuals in products such as wallboard, concrete, roofing materials, or bricks; and

(4) may allow the utility to recover just and reasonable costs of closing the surface impoundment if it determines that the utility's plan is in the public interest and the costs of the plan are not excessive.

SECTION 2. IC 13-11-2-61.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: **Sec. 61.8. "Electric utility", for purposes of IC 13-19-3-3, means a utility that owns, operates, or manages a plant at which electric power is or has been produced through the burning of coal.**

SECTION 3. IC 13-19-3-3, AS AMENDED BY P.L.1-2017, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE DECEMBER 1, 2020 (RETROACTIVE)]: **Sec. 3. (a) As used in this section, "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.

(b) Except as provided in subsection (c), the board may not adopt rules under section 1 of this chapter to regulate the following:

(1) The disposal of waste indigenous to the coal mining process and coal combustion products (as defined by ASTM E-2201-02a), including fly ash, bottom ash, boiler slag, fluidized bed combustion ash, or flue gas desulfurization material produced from the combustion of coal or the cleaning of stack gases on coal combustion units 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 products (as defined by ASTM E-2201-02a), including fly ash, bottom ash, boiler slag, fluidized bed combustion ash, or flue gas desulfurization material produced from the combustion of coal or the cleaning of stack gases on coal combustion units, if the use includes one (1) of the following uses:

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

(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 cement, sand, or water to produce a controlled strength fill material.

(F) A base in road construction.

(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.

(c) The board may adopt rules under section 1(1) of this chapter that



are 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 40 CFR 257.50 et seq.

(d) The rules adopted under subsection (c) may not allow the disposal of coal combustion residuals if, after the disposal:

- (1) any of the coal combustion residuals or any portion of the disposal structure, landfill, or impoundment in which the coal combustion residuals would be disposed of would be within a five hundred (500) year flood zone, according to the applicable Federal Emergency Management flood insurance rate map;**
- (2) any portion of the coal combustion residuals would be in contact with ground water during any portion of the year; or**
- (3) there would be potential for migration of the hazardous constituents of the coal combustion residuals into the uppermost aquifer.**

(e) After December 1, 2020, the department may not approve a plan for closure of a disposal facility for coal combustion residuals located at the site where the coal combustion residuals were generated if:

- (1) any portion of the disposal structure, landfill, or impoundment at that site is within a five hundred (500) year flood zone, according to the applicable Federal Emergency Management flood insurance rate map;**
- (2) any portion of the coal combustion residuals disposed of at the site would be in contact with ground water during any portion of the year;**
- (3) there has been documented migration of the hazardous constituents of the coal combustion residuals into the uppermost aquifer at that site;**
- (4) there is potential for migration of the hazardous constituents of the coal combustion residuals into the uppermost aquifer at that site; or**
- (5) the impoundment that would be used for disposal of the coal combustion residuals at the site:**
 - (A) does not have a liner compliant with 40 CFR 257.71; or**
 - (B) is structurally unstable.**

(f) If an electric utility is required under subsection (e) to dispose of coal combustion residuals at a site other than the site where the coal combustion residuals were generated, the electric utility shall, before July 1, 2022, submit to the department a plan



1 **for the disposal of the coal combustion residuals at a site other than**
2 **the site where the coal combustion residuals were generated.**

3 **SECTION 4. An emergency is declared for this act.**

