

SENATE BILL No. 412

DIGEST OF INTRODUCED BILL

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

Synopsis: Regulation of coal combustion residuals. Establishes a state policy favoring beneficial uses of coal combustion residuals (CCR). Provides that the rules of the environmental rules board may not allow CCR to be disposed of if, after the disposal, any of the CCR: (1) would be within a 500 year flood plain; (2) would be in contact with ground water; (3) could migrate into the uppermost aquifer; (4) would be left in an unstable area; or (5) would be in a seismic impact zone. Requires that the CCR disposal rules of the environmental rules board and the state permit program implementing the federal CCR rule be at least as protective and comprehensive as the federal CCR rule. Defines "closure in place" and prohibits the department from approving the closure in place of a CCR surface impoundment if: (1) the CCR surface impoundment is within a 500 year flood plain; (2) any of the CCR disposed of in the CCR surface impoundment would be in contact with ground water; or (3) CCR could migrate into the uppermost aquifer after the closure in place. Makes corresponding changes and a technical correction.

Effective: July 1, 2022.

Pol Jr., Glick

January 12, 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.

SENATE BILL No. 412



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 13-11-2-23.7 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2022]: **Sec. 23.7. "CCR surface**
4 **impoundment"**, for purposes of IC 13-19-3, means an active or
5 inactive facility that:

- 6 (1) was constructed for the purpose of storing or treating coal
7 combustion residuals that are or have been mixed with water;
8 and
- 9 (2) in which coal combustion residuals were present on
10 January 1, 2022.

11 SECTION 2. IC 13-11-2-30.2 IS ADDED TO THE INDIANA
12 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
13 [EFFECTIVE JULY 1, 2022]: **Sec. 30.2. "Closure in place"**, for
14 purposes of IC 13-19-3-3.4, has the meaning set forth in
15 IC 13-19-3-3.4(a).

16 SECTION 3. IC 13-11-2-30.8, AS AMENDED BY P.L.100-2021,
17 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2022]: Sec. 30.8. "Coal combustion residuals", for purposes
 2 of IC 13-15-1-3 and ~~IC 13-19-3-3~~, **IC 13-19-3**, has the meaning set
 3 forth in IC 13-19-3-3(a).

4 SECTION 4. IC 13-19-3-3, AS AMENDED BY P.L.165-2021,
 5 SECTION 145, IS AMENDED TO READ AS FOLLOWS
 6 [EFFECTIVE JULY 1, 2022]: Sec. 3. (a) As used in this ~~section~~;
 7 **chapter**, "coal combustion residuals" means fly ash, bottom ash, boiler
 8 slag, and flue gas desulfurization materials generated from burning coal
 9 for the purpose of generating electricity by electric utilities and
 10 independent power producers.

11 (b) As used in this ~~section~~; **chapter**, "federal CCR rule" refers to 40
 12 CFR 257, Subpart D, the federal standards for the disposal of coal
 13 combustion residuals in landfills and surface impoundments.

14 **(c) The policy of the state is that beneficial uses of coal**
 15 **combustion residuals are preferred over uses that are not**
 16 **beneficial. For the purposes of this subsection, unencapsulated uses**
 17 **of coal combustion residuals, including the use of coal combustion**
 18 **residuals:**

- 19 (1) as flowable fill;
- 20 (2) as structural fill;
- 21 (3) for soil modification or stabilization;
- 22 (4) for the stabilization or solidification of waste;
- 23 (5) as a soil amendment for agricultural purposes; or
- 24 (6) in aggregate material;

25 **are not beneficial uses of coal combustion residuals.**

26 ~~(c)~~ **(d)** The board may adopt rules under section 1(1) of this chapter
 27 that are consistent with **at least as protective and comprehensive as**
 28 the regulations of the United States Environmental Protection Agency
 29 concerning standards for the disposal of coal combustion residuals in
 30 landfills and surface impoundments, as set forth in the federal CCR
 31 rule. **The rules adopted under this subsection and section 1(1) of**
 32 **this chapter may not allow the disposal of coal combustion**
 33 **residuals if, after the disposal:**

- 34 (1) any of the coal combustion residuals or any portion of the
 35 CCR landfill, CCR surface impoundment, or other disposal
 36 facility in which the coal combustion residuals would be
 37 disposed of would be within a five hundred (500) year flood
 38 plain, according to the applicable Federal Emergency
 39 Management Agency Flood Insurance Rate Map;
- 40 (2) any portion of the coal combustion residuals would be in
 41 contact with ground water at any time of the year;
- 42 (3) there would be potential for migration of the hazardous



1 constituents of the coal combustion residuals into the
2 uppermost aquifer;

3 (4) any of the coal combustion residuals would be left in a
4 landfill or closed impoundment in an area that is an unstable
5 area, as determined under 40 CFR 257.64; or

6 (5) any of the coal combustion residuals would be left in a
7 seismic impact zone, as defined in 40 CFR 258.14(b)(1).

8 ~~(d)~~ (e) 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 **The state permit program established under this subsection must**
19 **be at least as protective and comprehensive as the federal CCR**
20 **rule.**

21 ~~(e)~~ (f) Not later than May 15, 2021, the department shall notify the
22 United States Environmental Protection Agency of its intention to
23 establish a state permit program described in subsection ~~(d)(1)~~ (e)(1)
24 and to seek approval of the state permit program under 42 U.S.C.
25 6945(d)(1).

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

27 (1) the department shall initiate rulemaking for the establishment
28 of the state permit program not more than sixty (60) days after ~~the~~
29 ~~effective date of the SECTION of Senate Enrolled Act 271-2021~~
30 ~~amending this section; April 29, 2021;~~ and

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

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

39 ~~(h)~~ The definitions set forth in Section 257.53 of the federal CCR
40 rule, as in effect January 1, 2021, apply throughout subsection (i):

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



- 1 (1) An initial one (1) time permit fee of twenty thousand five
 2 hundred dollars (\$20,500) for each CCR surface impoundment of
 3 ~~coal combustion residuals~~ regulated under the state permit
 4 program.
- 5 (2) An annual fee of twenty thousand five hundred dollars
 6 (\$20,500) for each surface impoundment of coal combustion
 7 residuals regulated under the state permit program that has not
 8 completed closure in accordance with Section 257.102 of the
 9 federal CCR rule. The duty to pay the fee established by this
 10 subdivision does not apply on an annual basis until three hundred
 11 sixty-five (365) days after the initial one (1) time permit fee
 12 established by subdivision (1) has been assessed.
- 13 (3) An annual fee of ten thousand dollars (\$10,000) for each
 14 surface impoundment of coal combustion residuals regulated
 15 under the state permit program that has been closed and for which
 16 post-closure care has been initiated and is still required in
 17 accordance with Section 257.104 of the federal CCR rule. The
 18 duty to pay the fee established by this subdivision does not apply
 19 on an annual basis until three hundred sixty-five (365) days after
 20 the initial one (1) time permit fee established by subdivision (1)
 21 has been assessed.
- 22 Fees collected under this subsection shall be deposited in the CCR
 23 program fund established by section 3.2 of this chapter.
- 24 (j) Not later than July 1, 2027, and before the end of each
 25 succeeding period of five (5) years, the board shall review the:
- 26 (1) costs to the department of operating the state permit program
 27 established under this section; and
 28 (2) revenue from the fees charged under subsection (i);
 29 as provided in IC 13-16-1-4. If the board determines that the revenue
 30 described in subdivision (2) is inadequate or excessive in relation to the
 31 costs described in subdivision (1), the board shall, under IC 13-16-1-2,
 32 change the amount of one (1) or more of the fees established under
 33 subsection (i).
- 34 (k) Upon the effective date that the board adopts rules to implement
 35 the federal CCR rule and subject to subsection (i), annual fees for CCR
 36 landfills that were previously regulated as restricted waste sites shall
 37 be deposited in the CCR program fund established by section 3.2 of
 38 this chapter.
- 39 SECTION 5. IC 13-19-3-3.2, AS ADDED BY P.L.100-2021,
 40 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 JULY 1, 2022]: Sec. 3.2. (a) The CCR program fund is established for
 42 the purpose of paying costs incurred by the department in operating the



1 state permit program established under section 3 of this chapter,
2 including:

- 3 (1) the personnel costs incurred in employing staff needed to
4 perform the duties associated with the state permit program; and
5 (2) the cost of conducting the funding reviews required by section
6 ~~3(h)~~ **3(j)** of this chapter.

7 (b) The fund shall be administered by the department.

8 (c) The expenses of administering the fund shall be paid from
9 money in the fund.

10 (d) The fund consists of:

- 11 (1) money appropriated by the general assembly;
12 (2) fees deposited under section 3 of this chapter; and
13 (3) donations, gifts, and money received from any other source,
14 including transfers from other funds or accounts.

15 (e) The treasurer of state shall invest the money in the fund not
16 currently needed to meet the obligations of the fund in the same
17 manner as other public funds may be invested.

18 (f) Money in the fund at the end of a state fiscal year does not revert
19 to the state general fund.

20 SECTION 6. IC 13-19-3-3.4 IS ADDED TO THE INDIANA CODE
21 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
22 1, 2022]: **Sec. 3.4. (a) As used in this section, "closure in place" of a
23 CCR surface impoundment means:**

- 24 **(1) the placement of coal combustion residuals in the CCR
25 surface impoundment will cease;**
26 **(2) the coal combustion residuals will not be removed from
27 the CCR surface impoundment; and**
28 **(3) a cover will be built over the coal combustion residuals.**

29 **(b) The department may not approve a plan for closure in place
30 of a CCR surface impoundment if:**

- 31 **(1) any portion of the CCR surface impoundment is within a
32 five hundred (500) year flood plain, according to the
33 applicable Federal Emergency Management Agency Flood
34 Insurance Rate Map;**
35 **(2) any portion of the coal combustion residuals disposed of in
36 the CCR surface impoundment would be in contact with
37 ground water during any time of the year; or**
38 **(3) there is potential for migration of the hazardous
39 constituents of the coal combustion residuals into the
40 uppermost aquifer at that site after the closure in place.**

