

SECOND REGULAR SESSION

# HOUSE BILL NO. 2041

## 99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE FITZWATER.

4939H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal section 260.242, RSMo, and to enact in lieu thereof one new section relating to solid waste management.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 260.242, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 260.244, to read as follows:

**260.244. 1. The department shall have the authority to promulgate rules and approve site-specific target levels for the management, closure, and post-closure of coal combustion residual (CCR) units in accordance with this section. As used in this section, a “coal combustion residual (CCR) unit” means a surface impoundment, utility waste landfill, or a CCR landfill. Except as otherwise provided by this section, such rules shall be as protective as, but not more restrictive than, 40 CFR 257 or successor regulations promulgated under Sections 1008(a)(3) and 4004(a) of the Resource Conservation and Recovery Act, 90 Stat. 2795. Such rules shall allow the use of risk-based decision making and establish target levels for soil and groundwater impacted by CCR constituents. The Missouri risk-based corrective action (MRBCA) rule, 10 CSR 25-18.010, and accompanying guidance shall be used to establish risk-based target levels for all CCR constituents to be left in place after closure and post-closure of a CCR unit. Target levels established pursuant to the MRBCA rule and guidance and contained in plans approved and enforceable by the department shall apply in lieu of any other soil or groundwater standard for the specified contaminants of concern. To the extent there is a conflict between this section and section 644.026 or 644.143, this section shall prevail.**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17           **2. No later than December 31, 2018, the department shall promulgate rules**  
18 **applicable to CCR surface impoundments. Nothing in this section shall authorize the**  
19 **department to promulgate rules requiring:**

20           **(1) A construction or operating permit for CCR surface impoundment closure or**  
21 **corrective action; or**

22           **(2) Post-closure and groundwater monitoring for CCR surface impoundments that**  
23 **complete closure by removal of coal combustion residuals.**

24           **3. No later than December 31, 2018, the department shall amend and promulgate**  
25 **rules applicable to utility waste and CCR landfills. Such rules, including location**  
26 **restrictions and design standards, shall not be more restrictive than those in 40 CFR 257,**  
27 **with the following exceptions:**

28           **(1) Each operator or permittee of a utility waste or CCR landfill shall provide a**  
29 **financial assurance instrument in such amount and form as prescribed by the department**  
30 **under the authority of sections 260.226 and 260.227; and**

31           **(2) Construction quality assurance measures for the construction and closure of**  
32 **utility waste or CCR landfills.**

33           **4. Until such time as the department has an approved and effective state program**  
34 **under Sections 1008(a)(3) and 4004(a) of the Resource Conservation and Recovery Act, the**  
35 **department has the authority to issue guidance or enter into enforceable agreements with**  
36 **site owners or operators to establish risk-based target levels, using all or part of the**  
37 **Missouri risk-based corrective action (MRBCA) program for closure and corrective action**  
38 **at CCR units. Nothing in this section shall prohibit the department, owners, or operators**  
39 **of CCR units exempt from 40 CFR 257 from utilizing the MRBCA program.**

40           **5. Effective January 1, 2019, the department shall require each owner, operator,**  
41 **or permittee of a CCR unit subject to 40 CFR 257 and not permitted as a utility waste**  
42 **landfill to pay a one-time enrollment fee in the amount of sixty-two thousand dollars per**  
43 **CCR unit for the department's implementation of the state CCR program. Each owner,**  
44 **operator, or permittee of a CCR unit subject to 40 CFR 257 shall pay an annual fee of**  
45 **fifteen thousand dollars per unit for the department's ongoing implementation of the state**  
46 **CCR program. Annual fees shall not be assessed on CCR units that have closed prior to**  
47 **December 31, 2017. The department shall convene a task force, including industry**  
48 **representatives, at least once every five years beginning in the month of January, 2024, to**  
49 **evaluate the sufficiency of such fee structure. Annual fees shall terminate at the end of the**  
50 **CCR unit's post-closure period so long as the CCR unit is not under a requirement to**  
51 **complete a corrective action, or sooner, if authorized by the department.**

52           **6. All fees under this section shall be paid by check or money order made payable**  
53 **to the department and, unless otherwise required by this section, shall be due on January**  
54 **first of each calendar year. These fees shall be accompanied by a form provided by the**  
55 **department and shall include the name and address of the CCR unit operator or permittee;**  
56 **the reporting period; the name of the CCR unit to which the fees apply; the status of the**  
57 **CCR unit, such as active, inactive, or closed; the amount of fees submitted; the signature**  
58 **of an authorizing official of the owner or permittee attesting to the accuracy of the**  
59 **information provided; and the date the form is submitted.**

60           **7. All fees received under this section shall be deposited into the “Coal Combustion**  
61 **Residuals Subaccount” of the solid waste management fund created under section 260.330.**  
62 **Fees collected under this section are dedicated, upon appropriation, to the department for**  
63 **conducting activities required by this section and rules adopted under this section. Fees**  
64 **established by this section shall not yield revenue greater than the cost of administering**  
65 **this section and the rules adopted under this section, but shall be adequate to ensure**  
66 **sustained operation of the state CCR program. The department shall prepare an annual**  
67 **report detailing costs incurred in connection with the management and closure of CCR**  
68 **units.**

69           **8. The provisions of section 33.080 to the contrary notwithstanding, moneys and**  
70 **interest earned on moneys in the subaccount shall not revert to the general revenue fund**  
71 **at the end of each biennium.**

72           **9. The department may promulgate, by rule and regulation, procedures to ensure**  
73 **and to verify that the fees imposed in this section are properly reported and transmitted**  
74 **to the department. Any rule or portion of a rule, as that term is defined in section 536.010,**  
75 **that is created under the authority delegated in this section shall become effective only if**  
76 **it complies with and is subject to all of the provisions of chapter 536 and, if applicable,**  
77 **section 536.028. This section and chapter 536 are nonseverable, and if any of the powers**  
78 **vested with the general assembly pursuant to chapter 536 to review, to delay the effective**  
79 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**  
80 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2018,**  
81 **shall be invalid and void.**

82           **10. Interest shall be imposed on the moneys due to the department at the rate of ten**  
83 **percent per annum from the prescribed due date until payment is actually made. These**  
84 **interest amounts shall be deposited to the credit of the applicable subaccount of the solid**  
85 **waste management fund.**

86           **11. The department may pursue penalties under section 260.240 for failure to**  
87 **timely submit the fees imposed in this section.**

88           **12. The department shall have the right to examine or audit financial resources,**  
89 **CCR unit activity records, and other applicable records to verify the collection and**  
90 **transmittal of the charges established in this section. Records shall be made available for**  
91 **inspection by the department or its designated representative upon request. All required**  
92 **records under this section shall be maintained by the operator or permittee of a CCR unit**  
93 **for at least three years unless extended by the department through written request or**  
94 **automatically extended during the course of any unresolved enforcement action regarding**  
95 **the regulated activity.**

2           ~~[260.242. All fly ash produced by coal combustion generating facilities~~  
3 ~~shall be exempt from all solid waste permitting requirements of this chapter, if~~  
4 ~~such ash is constructively reused or disposed of by a grout technique in any active~~  
5 ~~or inactive noncoal, non-open-pit mining operation located in a city having a~~  
6 ~~population of at least three hundred fifty thousand located in more than one~~  
7 ~~county and is also located in a county of the first class without a charter form of~~  
8 ~~government with a population of greater than one hundred fifty thousand and less~~  
9 ~~than one hundred sixty thousand, provided said ash is not considered hazardous~~  
   ~~waste under the Missouri hazardous waste law.]~~

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