

PROPOSED AMENDMENT

HB 1623 # 5

DIGEST

Regulation of coal combustion residuals. Amends the law requiring the department of environmental management (department) to establish a state permit program for the implementation in Indiana of the federal standards for the disposal of coal combustion residuals (CCR) in landfills and surface impoundments (the federal CCR rule). Provides that the rules adopted by the environmental rules board concerning the disposal of CCR in landfills and surface impoundments: (1) shall be consistent with 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. Defines "legacy generation resource" as 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. Provides that the authority of the department to establish requirements under the state permit program is the only authority the department has to establish requirements for a surface impoundment of CCR located on the grounds of a legacy generation resource.

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- 1 Page 58, between lines 7 and 8, begin a new paragraph and insert:
2 "SECTION 45. IC 13-19-3-3, AS AMENDED BY P.L.120-2022,
3 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 UPON PASSAGE]: Sec. 3. (a) As used in this section and section 3.1
5 of this chapter, "coal combustion residuals" 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 (b) ~~As used in~~ **The following definitions apply throughout** this
10 section:
11 (1) "Federal CCR rule" refers to 40 CFR 257, Subpart D, the
12 federal standards for the disposal of coal combustion residuals in
13 landfills and surface impoundments.
14 (2) **"Legacy generation resource" means an electric**
15 **generating facility that is directly or indirectly owned by a**
16 **corporation that was originally formed for the purpose of**
17 **providing power to the federal government for use in the**
18 **nation's defense or in furtherance of national interests. The**

1 **term includes the Ohio Valley Electric Corporation.**

2 (c) The board ~~may~~ **shall** adopt rules under section 1(a)(1) of this
3 chapter **concerning coal combustion residuals. The rules adopted**
4 **under this subsection:**

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

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

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

14 (d) The department shall do the following:

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

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

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

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

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

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

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

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

1 **department to establish requirements under the state permit**
 2 **program established under this section is the only authority the**
 3 **department has to establish requirements for a surface**
 4 **impoundment of coal combustion residuals located on the grounds**
 5 **of a legacy generation resource.**

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

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

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

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

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

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

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

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

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

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

1 subsection (i).

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

7 Renumber all SECTIONS consecutively.
(Reference is to HB 1623 as introduced.)