

SECOND REGULAR SESSION

SENATE BILL NO. 917

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CRAWFORD.

Read 1st time January 16, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5851S.011

AN ACT

To repeal section 260.242, RSMo, and to enact in lieu thereof one new section relating to coal ash.

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Section A. Section 260.242, RSMo, is repealed and one new section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

260.242. [All fly ash produced by coal combustion generating facilities
2 shall be exempt from all solid waste permitting requirements of this chapter, if
3 such ash is constructively reused or disposed of by a grout technique in any active
4 or inactive noncoal, non-open-pit mining operation located in a city having a
5 population of at least three hundred fifty thousand located in more than one
6 county and is also located in a county of the first class without a charter form of
7 government with a population of greater than one hundred fifty thousand and
8 less than one hundred sixty thousand, provided said ash is not considered
9 hazardous waste under the Missouri hazardous waste law.] **1. The department
10 shall have the authority to promulgate rules and approve site-specific
11 target levels for the management, closure, and post-closure of coal
12 combustion residual (CCR) units in accordance with this section. As
13 used in this section, "CCR unit" means a surface impoundment, utility
14 waste landfill, or a coal combustion residual landfill. Except as
15 otherwise provided in this section, such rules shall be as restrictive as,
16 but not more restrictive than, 40 CFR 257, or successor regulations
17 promulgated under Sections 1008(a)(3) and 4004(a) of the Resource
18 Conservation and Recovery Act, as amended. Such rules shall allow the
19 use of risk-based decision-making and establish target levels for soil**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

20 and groundwater impacted by CCR constituents. The Missouri risk-
21 based corrective action (MRBCA) rule, 10 CSR 25-18.010, and
22 accompanying guidance shall be used to establish risk-based target
23 levels for all CCR constituents to be left in place after closure and post-
24 closure of a CCR unit. Target levels established under the MRBCA rule
25 and guidance, and contained in plans approved and enforceable by the
26 department, shall apply in lieu of any other soil or groundwater
27 standard for the specified contaminants of concern. To the extent there
28 is a conflict between this section and sections 644.143 or 644.026, this
29 section shall prevail.

30 2. No later than December 31, 2018, the department shall
31 promulgate rules applicable to CCR surface impoundments. Nothing in
32 this section shall authorize the department to promulgate rules
33 requiring:

34 (1) A construction or operating permit for CCR surface
35 impoundment closure or corrective action; or

36 (2) Post-closure and groundwater monitoring for CCR surface
37 impoundments that complete closure by removal of coal combustion
38 residuals.

39 3. No later than December 31, 2018, the department shall amend
40 and promulgate rules applicable to utility waste and CCR
41 landfills. Such rules, including location restrictions and design
42 standards, shall not be more restrictive than those set forth in 40 CFR
43 257, with the following exceptions:

44 (1) Each operator or permittee of a utility waste or CCR landfill
45 shall provide a financial assurance instrument in such amount and
46 form as prescribed by the department under the authority of sections
47 260.226 and 260.227; and

48 (2) Construction quality assurance measures for the construction
49 and closure of utility waste or CCR landfills.

50 4. Until such time as the department has an approved and
51 effective state program under Sections 1008(a)(3) and 4004(a) of the
52 Resource Conservation and Recovery Act, the department has the
53 authority to issue guidance and enter into enforceable agreements with
54 site owners or operators to establish risk-based target levels, using all
55 or part of the MRBCA program, for closure and corrective action at
56 CCR units. Nothing in this section shall prohibit the department,

57 owners, or operators of CCR units that are exempt from 40 CFR 257
58 from utilizing the MRBCA program.

59 5. Beginning January 1, 2019, the department shall require each
60 owner, operator, or permittee of a CCR unit subject to 40 CFR 257 and
61 not permitted as a utility waste landfill to pay a one-time enrollment
62 fee in the amount of sixty-two thousand dollars per CCR unit for the
63 department's implementation of the state CCR program. Each owner,
64 operator, or permittee of a CCR unit subject to 40 CFR 257 shall pay an
65 annual fee of fifteen thousand dollars per unit for the department's
66 ongoing implementation of the state CCR program. Annual fees shall
67 not be assessed on CCR units that have closed prior to December 31,
68 2017. Annual fees shall terminate at the end of the CCR unit's post-
69 closure period as long as the CCR unit is not under a requirement to
70 complete a corrective action, or sooner, if authorized by the
71 department.

72 6. Notwithstanding the statutory fee amounts set forth in this
73 section to the contrary, beginning January 1, 2024, and every five years
74 thereafter, the department shall conduct a comprehensive review of the
75 program costs and fees assessed under this section in order to evaluate
76 the sufficiency of such fee structure. Such review shall detail the costs
77 incurred in connection with the management and closure of CCR
78 units. Such review shall also include stakeholder meetings in order to
79 solicit stakeholder input from industry representatives and interested
80 parties. Upon completion of the comprehensive review, the department
81 shall submit a report to the general assembly by December of the same
82 year, and shall file a final order of rulemaking setting forth an
83 amended fee structure based on the review. Fees established under
84 this section shall not yield revenue greater than the cost of
85 administering this section, and the rules adopted under this section
86 shall be adequate to ensure sustained operation of the state CCR
87 program.

88 7. All fees assessed under this section shall be paid by check or
89 money order made payable to the department, and, unless otherwise
90 required by this section, shall be due on January 1 of each calendar
91 year. Such fees shall be accompanied by a form provided by the
92 department that shall include the following information:

93 (1) The name and address of the CCR unit operator or permittee;

- 94 **(2) The reporting period;**
95 **(3) The name of the CCR unit that the fees apply to;**
96 **(4) The status of the CCR unit, being active, inactive, or closed;**
97 **(5) The amount of fees submitted;**
98 **(6) The signature of CCR unit owner or permittee attesting to the**
99 **accuracy of the information provided; and**
100 **(7) The date the form is submitted.**

101 **8. All fees received under to this section shall be credited to the**
102 **"Coal Combustion Residuals Subaccount", which is hereby created, in**
103 **the solid waste management fund. Moneys in the subaccount shall be**
104 **used solely by the department for administering the provisions of this**
105 **section. The state treasurer shall be the custodian of the subaccount**
106 **and may approve disbursements from the fund in accordance with**
107 **sections 30.170 and 30.180. Notwithstanding the provisions of section**
108 **33.080 to the contrary, any moneys remaining in the subaccount at the**
109 **end of the biennium shall not revert to the credit of the general**
110 **revenue fund. The state treasurer shall invest moneys in the fund in**
111 **the same manner as other funds are invested. Any interest and moneys**
112 **earned on such investments shall be credited to the subaccount. The**
113 **department may promulgate rules to ensure and verify that the fees**
114 **imposed under this section are properly reported and transmitted to**
115 **the department.**

116 **9. Interest shall be imposed on the moneys due the department**
117 **at the rate of ten percent per annum from the prescribed due date until**
118 **payment is actually made. Such interest shall be deposited to the**
119 **credit of the coal combustion residuals subaccount of the solid waste**
120 **management fund created under subsection 8 of this section.**

121 **10. The department may pursue penalties under 260.240 for**
122 **failure to timely submit the fees imposed under this section.**

123 **11. The department shall have the right to examine or audit**
124 **financial resources, CCR unit activity records, and other applicable**
125 **records to verify the collection and transmittal of the fees established**
126 **in this section. Records shall be made available for inspection by the**
127 **department upon request. All records required under this section shall**
128 **be maintained by the operator or permittee of a CCR unit for at least**
129 **three years, unless extended by the department through written**
130 **request or automatically extended during the course of any unresolved**

131 enforcement action regarding the regulated activity.

132 12. The department of natural resources may promulgate rules
133 to implement the provisions of this section. Any rule or portion of a
134 rule, as that term is defined in section 536.010 that is created under the
135 authority delegated in this section shall become effective only if it
136 complies with and is subject to all of the provisions of chapter 536, and,
137 if applicable, section 536.028. This section and chapter 536 are
138 nonseverable and if any of the powers vested with the general assembly
139 pursuant to chapter 536, to review, to delay the effective date, or to
140 disapprove and annul a rule are subsequently held unconstitutional,
141 then the grant of rulemaking authority and any rule proposed or
142 adopted after August 28, 2018, shall be invalid and void.

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Bill

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