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SENATE BILL NO. 1383

Offered January 11, 2017

Prefiled January 11, 2017

A *BILL to amend the Code of Virginia by adding a section numbered 10.1-1402.03, relating to coal ash; treatment by utilities.*

Patron—Surovell

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

- 1. That the Code of Virginia is amended by adding a section numbered 10.1-1402.03 as follows:**
§ 10.1-1402.03. Coal ash; treatment by utilities.

A. As used in this section:

"Benchmark amount" means the amount of coal ash from storage facilities in the Commonwealth that, when treated, would produce the average of the amounts of specification-grade coal ash that were imported into the Commonwealth from other states and other countries in each of the years 2014, 2015, and 2016 for use as supplementary cementitious material in the manufacture of concrete or other beneficial encapsulated uses in the Commonwealth, as determined by the Department's investigation into its records or estimation using the best available methods.

"Coal ash" means coal combustion residuals, including fly ash, furnace bottom ash, boiler slag, and flue gas desulfurization materials, produced from burning coal in an electric generation facility owned or operated by a utility.

"Permit" means a waste disposal permit issued by the Director or a wastewater discharge permit issued by the State Water Control Board to a utility that authorizes the utility to store, manage, or dispose of coal ash at a storage facility.

"Specification-grade coal ash" means coal combustion residuals that are of adequate quality to be used without additional treatment as supplementary cementitious material in the manufacture of concrete or other beneficial encapsulated uses.

"Storage facility" means a capped landfill or a surface impoundment, pond, or lagoon located in the Commonwealth where a utility conducts the dry or wet storage of coal ash.

"Treat" means to perform any or all of the following treatments: (i) reclaim the coal ash from storage; (ii) dry the coal ash; (iii) remove organics and other contaminants; (iv) reduce carbon content; (v) subject the coal ash to processes required to abate chemical weatherization resulting from prolonged exposure to water; and (vi) perform any other treatments required to upgrade stored coal ash to specification-grade coal ash.

"Utility" means an investor-owned incumbent electric utility subject to the provisions of § 56-585.1 that stores or manages coal ash pursuant to a permit.

B. Each permit issued or renewed by the Director or the State Water Control Board shall require the permitted utility to withdraw from the storage facility and to treat, annually commencing in calendar year 2018, an amount of coal ash that is not less than the utility's pro rata share of the benchmark amount.

C. The Department shall notify each utility by April 1 of the utility's pro rata share of the benchmark amount for the following year. A utility's pro rata share of the benchmark amount for any year is determined by multiplying the benchmark amount by a fraction the numerator of which is the amount of coal ash stored at the storage facility in that year and the denominator of which is the total of all coal ash stored in all storage facilities in the Commonwealth in that year.

D. The reasonable costs incurred by a utility in treating, transporting, and marketing coal ash in accordance with the terms of a permit issued or amended in accordance with the provisions of this section, including the reasonable costs of purchasing, installing, and operating treatment equipment or of transporting coal ash to facilities for treatment at a site removed from the storage facility, net of proceeds from sales of the specification-grade coal ash, shall constitute costs necessary to comply with environmental laws applicable to generation facilities used to serve the utility's native load obligations and shall be recoverable from customers in a proceeding under subdivision A 5 e of § 56-585.1. However, if a utility fails to sell, in bona fide transactions at prevailing market prices, any of the specification-grade coal ash that it produced, and such failure is due primarily to actions or inactions within the utility's control, then the amount recoverable from the utility's customers in such proceeding shall not include the amount that the State Corporation Commission determines the utility would have earned from sales had such failure not occurred. The treating, transporting, and marketing of coal ash

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59 *as required by this section are in the public interest.*

60 *E. Pursuant to § 59.1-9.4, any action taken by a utility in accordance with the requirements of any*
61 *permit issued or renewed as provided in this section constitutes conduct that is authorized, regulated, or*
62 *approved by a statute of the Commonwealth and by an administrative agency of the Commonwealth*
63 *having jurisdiction of the subject matter and having authority to consider the anticompetitive effect, if*
64 *any, of such conduct.*

65 **2. That the Department of Environmental Quality (DEQ) shall, by January 1, 2018, amend the**
66 **terms of each existing permit for the transportation, storage, management, or disposal of coal**
67 **combustion residuals at a storage facility to require the permittee to comply with the provisions of**
68 **§ 10.1-1402.03 of the Code of Virginia, as created by this act. The same requirement shall be**
69 **included by DEQ in each such permit issued on or after January 1, 2018.**

70 **3. That the State Water Control Board (the Board) shall, by January 1, 2018, amend the terms of**
71 **each existing permit for the transportation, storage, management, or disposal of coal combustion**
72 **residuals at a storage facility to require the permittee to comply with the provisions of**
73 **§ 10.1-1402.03 of the Code of Virginia, as created by this act. The same requirement shall be**
74 **included by the Board in each such permit issued on or after January 1, 2018.**

75 **4. That the Department of Transportation shall, by January 1, 2018, enter into a memorandum of**
76 **understanding with the Department of Environmental Quality with reference to permit**
77 **amendments or additional permitting required for the transportation, storage, management, or**
78 **disposal of coal combustion residuals pursuant to the provisions of § 10.1-1402.03 of the Code of**
79 **Virginia, as created by this act.**