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## SENATE BILL NO. 1398

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources  
on February 2, 2017)

(Patron Prior to Substitute—Senator Surovell)

A BILL to amend the Code of Virginia by adding in Article 2.1 of Chapter 14 of Title 10.1 a section numbered 10.1-1413.3, relating to coal combustion residuals unit; closure permit; evaluation.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 2.1 of Chapter 14 of Title 10.1 a section numbered 10.1-1413.3 as follows:

**§ 10.1-1413.3. Coal combustion residuals unit; closure permit; evaluation required.**

A. Every owner or operator of a coal combustion residuals (CCR) surface impoundment, as that term is defined at 40 C.F.R. § 257.53, that is located within the Chesapeake Bay watershed shall conduct an assessment of each such CCR surface impoundment (CCR unit) regarding the closure of any such unit. At a minimum, an assessment shall, for each CCR unit:

1. Identify and describe any groundwater or surface water pollution located at or stemming from the CCR unit, including pollution identified through past monitoring, and evaluate corrective measures to resolve such pollution. Any such evaluation shall address the issues set forth in 40 C.F.R. § 257.96(c) and shall describe and demonstrate how the proposed corrective measures will restore groundwater or surface water quality.

2. Evaluate the clean closure of the CCR unit through excavation and responsible recycling or reuse of coal ash residuals by incorporating them into concrete or other products in a manner that prevents the release into the environment of the pollutants contained within the coal ash residuals. Such evaluation shall consider the feasibility of the onsite processing of a CCR unit for cementitious purposes as well as the feasibility of creating a processing facility or facilities to serve multiple CCR units, including offsite CCR units.

3. Evaluate the clean closure of the CCR unit through the excavation and removal of coal ash residuals to dry, lined storage in an appropriately permitted and monitored landfill, including an analysis of the impact that any responsible recycling or reuse options would have on such excavation and removal.

4. Demonstrate the long-term safety of the CCR unit, addressing any long-term risks posed by the proposed closure plan and siting, including risks related to extreme weather events, flooding, hurricanes, storm surges, and erosive forces.

5. Demonstrate that the proposed closure method for the CCR unit ensures that no coal combustion residuals are located within the areas identified in 40 C.F.R. § 257.60 through 40 C.F.R. § 257.64 or subsection B of § 10.1-1408.4.

B. On or before January 1, 2018, the owner or operator of the CCR unit shall transmit the assessments required by subsection A to the Department and to the Department of Conservation and Recreation (DCR) and shall identify, at a minimum, one site having at least one CCR unit that is suitable for processing for cementitious purposes. A CCR unit will be deemed suitable for such processing if the owner or operator of the CCR unit could, using commercially reasonable efforts, install and operate an ash beneficiation project at the site that is capable of annually processing 300,000 tons of ash to specifications appropriate for cementitious purposes, with all ash processed to be removed from the CCR units located at the site or from other CCR units when such ash may be safely transported to the processing site. The Director shall then hold a comment period of not less than 45 days seeking public comment on the completed assessments. If DCR has any commentary on or evaluation of the assessment, DCR shall provide it to the Department by the end of the comment period.

C. The Director shall issue no draft permit to provide for the closure of any CCR unit until he has reviewed and evaluated the complete assessments and all comments received relating to that CCR unit. Notwithstanding any other provision of law and in addition to any other requirement, the Director's decision to issue any such permit for the closure of a CCR unit shall include and rely upon his review and evaluation of the assessment required by this section.