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HOUSE BILL NO. 2105

Offered January 9, 2019

Prefiled January 8, 2019

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 units; closure; beneficial use.*

Patrons—Carroll Foy, Kory, Lopez and Torian; Senator: Chase

Referred to Committee on Agriculture, Chesapeake and Natural Resources

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. Closure of certain coal combustion residuals units.

A. *For the purposes of this section only:*

"CCR landfill" means an area of land or an excavation that receives CCR and is not a surface impoundment, underground injection well, salt dome formation, salt bed formation, underground or surface coal mine, or cave and that is owned or operated by an electric utility or independent power producer.

"CCR surface impoundment" means a natural topographic depression, man-made excavation, or diked area that (i) is designed to hold an accumulation of CCR and liquids; (ii) treats, stores, or disposes of CCR; and (iii) is owned or operated by an electric utility or independent power producer.

"CCR unit" means any CCR landfill, CCR surface impoundment, lateral expansion of a CCR unit, or combination of two or more such units that is owned by an electric utility or independent power producer. "CCR unit" also includes any CCR below the unit boundary of the CCR landfill or CCR surface impoundment.

"Coal combustion residuals" or "CCR" means fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by an electric utility or independent power producer.

"Encapsulated beneficial use" means a beneficial use of CCR that binds the CCR into a solid matrix and minimizes its mobilization into the surrounding environment.

B. The owner or operator of any CCR unit located within the Chesapeake Bay watershed that ceased accepting CCR prior to July 1, 2019, shall complete closure of such unit by (i) removing all of the CCR in accordance with applicable standards established by Virginia Solid Waste Management Regulations and (ii) either (a) beneficially reusing all such CCR in a recycling process for encapsulated beneficial use or (b) disposing of the CCR in a permitted landfill that meets or exceeds the federal Criteria for Municipal Solid Waste Landfills pursuant to 40 C.F.R. Part 258 and includes, at a minimum, a composite liner and leachate collection and removal system. No owner or operator shall dispose of such CCR in a landfill until it has included in the report required pursuant to subdivision G 2 a justification for why the beneficial reuse of the CCR is not economically feasible.

C. The owner or operator shall complete the closure of such CCR unit required by this section no later than 15 years after initiating the closure process at that CCR unit. During the closure process, the owner or operator shall, at its expense, provide a connection to a municipal water supply, or where such connection is not feasible provide water testing, for any residence within one-half mile of the CCR unit whose well tests show elevated levels of heavy metals.

D. Where closure pursuant to this section requires that CCR be removed off-site, the owner or operator shall utilize rail transport to the maximum extent practicable. To the extent that rail transport is not practicable, the owner or operator shall develop a transportation plan in consultation with all affected local governments to minimize the impact of any transport of CCR on adjacent property owners and surrounding communities. The transportation plan shall include (i) alternative transportation options to be utilized, including rail transport in combination with other transportation methods necessary to meet the closure timeframe established in subsection C, and (ii) plans for any transportation by truck, including the frequency of truck travel, the route of truck travel, and measures to control noise, traffic impact, safety, and fugitive dust caused by such truck travel. Once such transportation plan is completed, the owner or operator shall post it on a publicly accessible website. The owner or operator shall provide notice of the availability of the plan to the Department and the chief administrative officer of the locality in which the CCR unit is located and shall publish such notice once in a newspaper of general circulation in such locality.

E. The owner or operator of any CCR unit shall, on an ongoing basis, accept and review proposals

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59 to beneficially reuse any CCR that are not subject to an existing contractual agreement to remove CCR
60 pursuant to the provisions of subsection B. Any entity submitting such a proposal shall provide
61 information from which the owner or operator can determine (i) the amount of CCR in each such CCR
62 unit, including CCR located below the unit's waste boundary, that may be suitable for beneficial reuse,
63 including encapsulated beneficial uses, such as bricks or concrete; (ii) the cost of such beneficial reuse
64 of such CCR; and (iii) the potential market demand for material to be beneficially reused from such
65 CCR.

66 F. Any entity conducting work pursuant to closure activities described in subsection B shall, to the
67 maximum extent practicable, utilize local labor and ensure that the work is performed by responsible
68 contractors and subcontractors that pay workers, as evidenced by payroll and employee records, fair
69 wages and fair benefits, including employee health care coverage, pension or 401(k) benefits, and
70 certified apprenticeship programs. The fairness of such wages and benefits shall be determined by
71 comparison with wages and benefits offered for comparable work while accounting for local market
72 factors, including the nature of the project, comparable job or trade classifications, and the scope and
73 complexity of services provided. Every contractor or subcontractor shall have a record of observing all
74 local, state, and national laws, including laws pertaining to withholding taxes, minimum and overtime
75 wages, workers' compensation insurance, and occupational health and safety. Any contractor working on
76 the project shall keep an up-to-date recorded list of its subcontractors.

77 G. Beginning October 1, 2019, and continuing annually until closure of all of its CCR units is
78 complete, the owner or operator of any CCR unit shall compile two reports:

79 1. A report describing the owner's or operator's closure plan for all such CCR units; the closure
80 progress to date, both per unit and in total; a detailed accounting of the amounts of CCR that have
81 been and are expected to be beneficially reused from such units, both per unit and in total; a detailed
82 accounting of the amounts of CCR that have been and are expected to be landfilled from such units,
83 both per unit and in total; a detailed accounting of the utilization of transportation options and a
84 transportation plan as required by subsection D; and a discussion of groundwater and surface water
85 monitoring results and any measures taken to address such results as closure is being completed.

86 2. A report that contains the proposals and analysis for proposals required by subsection E, the
87 justification for any determination made pursuant to subsection B regarding economic feasibility of
88 beneficial reuse of CCR, and any information supporting such a determination.

89 The owner or operator shall post each such report on a publicly accessible website and shall submit
90 each such report to the Governor; the Secretary of Natural Resources; the Chairman of the Senate
91 Committee on Agriculture, Conservation and Natural Resources; the Chairman of the House Committee
92 on Agriculture, Chesapeake and Natural Resources; the Chairman of the Senate Committee on
93 Commerce and Labor; the Chairman of the House Committee on Commerce and Labor; and the
94 Director.