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SENATE BILL NO. 1355

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Stuart
on February 1, 2019)

(Patrons Prior to Substitute—Senators Wagner, Chase [SB 1009], and Surovell [SBs 1533 and 1534])

A BILL to allow closure of certain coal combustion residuals impoundments.

Be it enacted by the General Assembly of Virginia:

1. § 1. 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.

"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.

"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. Notwithstanding the provisions of 40 C.F.R. Part 257, "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.

"Commission" means the State Corporation Commission.

The above definitions shall be interpreted in a manner consistent with 40 C.F.R. Part 257, except as expressly provided herein.

B. The owner or operator of any CCR unit located within the Chesapeake Bay watershed at the Brema Power Station, Chesapeake Energy Center, Chesterfield Power Station, and Possum Point Power Station 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 (9VAC20-81) and (ii) either (a) beneficially reusing all such CCR in a recycling process for beneficial use or (b) disposing of the CCR in a permitted landfill on the property upon which the CCR unit is located, adjacent to the property upon which the CCR unit is located, or off of the property on which the CCR unit is located, that includes, at a minimum, a composite liner and leachate collection system that meets or exceeds the federal Criteria for Municipal Solid Waste Landfills pursuant to 40 C.F.R. Part 258. The owner or operator may beneficially reuse up to 6.8 million cubic yards in aggregate of such removed CCR, if during the Commission's reasonableness determination, it also finds the costs to be economical, from no fewer than two of the sites listed in this subsection where CCR is located.

C. The owner or operator shall complete the closure of any 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, offer to 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.

D. Where closure pursuant to this section requires that CCR or CCR that has been beneficially reused be removed off-site, the owner or operator shall develop a transportation plan in consultation with any county, city, or town in which the CCR units are located and any county, city, or town within two miles of the CCR units that minimizes 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 and barge transport, if feasible, 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 officers of the consulting localities and shall publish such notice once in a newspaper of general circulation in such locality.

E. The owner or operator of any CCR unit subject to the provisions of subsection B shall accept and review proposals to beneficially reuse any CCR that are not subject to an existing contractual agreement to remove CCR pursuant to the provisions of subsection B every four years beginning July 1, 2022. Any entity submitting such a proposal shall provide information from which the owner or operator

60 can determine (i) the amount of CCR that will be utilized for encapsulated beneficial use; (ii) the cost of
61 such beneficial reuse of such CCR; and (iii) the guaranteed timeframe in which the CCR will be
62 utilized.

63 F. In conducting closure activities described in subsection B, the owner or operator shall (i) identify
64 options for utilizing local workers, (ii) consult with the Commonwealth's Chief Workforce Development
65 Officer on opportunities to advance the Commonwealth's workforce goals, including furtherance of
66 apprenticeship and other workforce training programs to develop the local workforce, and (iii) give
67 priority to the hiring of local workers.

68 G. No later than October 1, 2022, and no less frequently than every two years thereafter until
69 closure of all of its CCR units is complete, the owner or operator of any CCR unit subject to the
70 provisions of subsection B shall compile the following two reports:

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

78 2. A report that contains the proposals and analysis for proposals required by subsection E.

79 The owner or operator shall post each such report on a publicly accessible website and shall submit
80 each such report to the Governor, the Secretary of Natural Resources, the Chairman of the Senate
81 Committee on Agriculture, Conservation and Natural Resources, the Chairman of the House Committee
82 on Agriculture, Chesapeake and Natural Resources, the Chairman of the Senate Committee on
83 Commerce and Labor, the Chairman of the House Committee on Commerce and Labor, and the
84 Director.

85 H. All costs associated with closure of a CCR unit in accordance with this section shall be
86 recoverable through a rate adjustment clause authorized by the Commission under the provisions of
87 subdivision A 5 e of § 56-585.1 of the Code of Virginia, excluding any return on equity, provided that
88 (i) when determining the reasonableness of such costs the Commission shall not consider closure in
89 place of the CCR unit as an option; (ii) the annual revenue requirement recoverable through a rate
90 adjustment clause authorized under this act, exclusive of any other rate adjustment clauses approved by
91 the Commission under the provisions of subdivision A 5 e of § 56-585.1 of the Code of Virginia, shall
92 not exceed \$225 million on a Virginia jurisdictional basis for the Commonwealth in any 12-month
93 period, provided that any under-recovery amount of revenue requirements incurred in excess of \$225
94 million in a given 12-month period, including financing costs, shall be deferred and recovered through
95 the rate adjustment clause over up to three succeeding 12-month periods without regard to this
96 limitation, and with the length of the amortization period being determined by the Commission; (iii)
97 costs may begin accruing on July 1, 2019, but no approved rate adjustment clause charges shall be
98 included in customer bills until July 1, 2021; (iv) up to \$3 billion of any such costs shall be allocated to
99 all customers of the utility in the Commonwealth as a non-bypassable charge, irrespective of the
100 generation supplier of any such customer; and (v) any such costs that are allocated to the utility's
101 system customers outside of the Commonwealth that are not actually recovered from such customers
102 shall not be included for cost recovery from jurisdictional customers in the Commonwealth through the
103 rate adjustment clause.

104 I. Any electric public utility subject to the requirements of this section may, without regard for
105 whether it has petitioned for any rate adjustment clause pursuant to subdivision A 5 e of § 56-585.1 of
106 the Code of Virginia, petition the Commission for approval of a plan for CCR unit closure at any or all
107 of its CCR unit sites listed in subsection B. Any such plan shall take into account site-specific conditions
108 and shall include proposals to beneficially reuse up to 6.8 million cubic yards of CCR in aggregate
109 from no fewer than two of the sites listed in subsection B. The Commission shall issue its final order
110 with regard to any such petition within six months of its filing, and in doing so shall determine whether
111 the utility's plan for CCR unit closure, and the projected costs associated therewith, are reasonable and
112 prudent, taking into account that closure in place of any CCR unit is not to be considered as an option.
113 The Commission shall not consider plans that do not comply with subsection B.

114 J. Nothing in this section shall be construed to limit the authority of the Commission in determining
115 the prudence and reasonableness of costs associated with CCR surface impoundments, landfills, units, or
116 encapsulated beneficial use. Further, the General Assembly acknowledges that this act mandates
117 compliance standards that substantially exceed 40 C.F.R. Part 257. Specifically, this act forbids the
118 currently permitted practice of closure in place. As such, these additional regulatory costs will be borne
119 by the Virginia electric utility's ratepayer. Therefore, it is the goal of the legislature to extend the cost
120 recovery period as far as practicable to avoid economic hardships and uncompetitive electricity rates.