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HOUSE BILL NO. 443

Offered January 8, 2020

Prefiled January 3, 2020

A BILL to amend the Code of Virginia by adding a section numbered 10.1-1402.04, relating to closure of certain coal combustion residuals impoundments; Giles and Russell Counties.

Patrons—Carroll Foy and Hurst

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 a section numbered 10.1-1402.04 as follows:
§ 10.1-1402.04. Closure of certain coal combustion residuals units; Giles and Russell Counties.

A. For the purposes of this section only:

"Carrying cost" means the cost associated with financing expenditures incurred but not yet recovered from the electric utility's customers and shall be calculated by applying the electric utility's weighted average cost of debt and equity capital, as determined by the State Corporation Commission, with no additional margin or profit, to any unrecovered balances.

"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.

"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.

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

B. The owner or operator of any CCR unit located in Giles County or Russell County at the Glen Lyn Plant and the Clinch River Plant that ceased accepting CCR prior to July 1, 2020, 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 encapsulated 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 shall beneficially reuse a total of no less than 6.8 million cubic yards in aggregate of such removed CCR 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,

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59 and measures to control noise, traffic impact, safety, and fugitive dust caused by such truck travel. Once
60 such transportation plan is completed, the owner or operator shall post it on a publicly accessible
61 website. The owner or operator shall provide notice of the availability of the plan to the Department
62 and the chief administrative officers of the consulting localities and shall publish such notice once in a
63 newspaper of general circulation in such locality.

64 E. The owner or operator of any CCR unit subject to the provisions of subsection B shall accept and
65 review proposals to beneficially reuse any CCR that are not subject to an existing contractual
66 agreement to remove CCR pursuant to the provisions of subsection B every four years beginning July 1,
67 2023. Any entity submitting such a proposal shall provide information from which the owner or operator
68 can determine (i) the amount of CCR that will be utilized for encapsulated beneficial use; (ii) the cost of
69 such beneficial reuse of such CCR; and (iii) the guaranteed timeframe in which the CCR will be
70 utilized.

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

76 G. No later than October 1, 2023, and no less frequently than every two years thereafter until
77 closure of all of its CCR units is complete, the owner or operator of any CCR unit subject to the
78 provisions of subsection B shall compile the following 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.

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

93 H. All costs associated with closure of a CCR unit in accordance with this section shall be
94 recoverable through a rate adjustment clause authorized by the State Corporation Commission (the
95 Commission) under the provisions of subdivision A 5 e of § 56-585.1, provided that (i) when determining
96 the reasonableness of such costs the Commission shall not consider closure in place of the CCR unit as
97 an option; (ii) the annual revenue requirement recoverable through a rate adjustment clause authorized
98 under this section, exclusive of any other rate adjustment clauses approved by the Commission under the
99 provisions of subdivision A 5 e of § 56-585.1, shall not exceed \$225 million on a Virginia jurisdictional
100 basis for the Commonwealth in any 12-month period, provided that any under-recovery amount of
101 revenue requirements incurred in excess of \$225 million in a given 12-month period, limited to the
102 under-recovery amount and the carrying cost, shall be deferred and recovered through the rate
103 adjustment clause over up to three succeeding 12-month periods without regard to this limitation, and
104 with the length of the amortization period being determined by the Commission; (iii) costs may begin
105 accruing on July 1, 2020, but no approved rate adjustment clause charges shall be included in customer
106 bills until July 1, 2022; (iv) any such costs shall be allocated to all customers of the utility in the
107 Commonwealth as a non-bypassable charge, irrespective of the generation supplier of any such
108 customer; and (v) any such costs that are allocated to the utility's system customers outside of the
109 Commonwealth that are not actually recovered from such customers shall be included for cost recovery
110 from jurisdictional customers in the Commonwealth through the rate adjustment clause.

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

121 *J. Nothing in this section shall be construed to require additional beneficial reuse of CCR at any*
122 *active coal-fired electric generation facility if such additional beneficial reuse results in a net increase*
123 *in truck traffic on the public roads of the locality in which the facility is located as compared to such*
124 *traffic during calendar year 2019.*

125 *K. The Commonwealth shall not authorize any cost recovery by an owner or operator subject to the*
126 *provisions of this section for any fines or civil penalties resulting from violations of federal and state*
127 *law or regulation.*