

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act 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.

[H 443]

Approved

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:

"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.

"Commission" means the State Corporation Commission.

"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 shall, if all CCR units at such plant ceased receiving CCR and submitted notification of completion of a final cap to the Department prior to January 1, 2019, complete post-closure care and any required corrective action of such unit. If all CCR units at such plant have not submitted notification of completion of a final cap to the Department prior to January 1, 2019, the owner or operator shall close all CCR units at such plant 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 CCR removed from its CCR unit if beneficial use of such removed CCR is anticipated to reduce costs incurred under this section.

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 excavation 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 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

57 methods necessary to meet the closure timeframe established in subsection C and (ii) plans for any
 58 transportation by truck, including the frequency of truck travel, the route of truck travel, and measures
 59 to control noise, traffic impact, safety, and fugitive dust caused by such truck travel. Once such
 60 transportation plan is completed, the owner or operator shall post it on a publicly accessible website.
 61 The owner or operator shall provide notice of the availability of the plan to the Department and the
 62 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 for the encapsulated beneficial use of CCR pursuant to the provisions of subsection B
 66 every four years beginning July 1, 2023. Any entity submitting such a proposal shall provide
 67 information from which the owner or operator can determine (i) the amount of CCR that will be utilized
 68 for encapsulated beneficial use; (ii) the cost of the proposed beneficial use of such CCR; and (iii) the
 69 guaranteed timeframe in which the CCR will be utilized.

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

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

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

93 H. All costs associated with closure by removal of a CCR unit or encapsulated beneficial use of CCR
 94 material in accordance with subsection B shall be recoverable through a rate adjustment clause
 95 authorized by the Commission under the provisions of subdivision A 5 e of § 56-585.1, provided that (i)
 96 when determining the reasonableness of such costs the Commission shall not consider closure in place
 97 of the CCR unit as an option; (ii) the annual revenue requirement recoverable through a rate
 98 adjustment clause authorized under this section, exclusive of any other rate adjustment clauses approved
 99 by the Commission under the provisions of subdivision A 5 e of § 56-585.1, shall not exceed \$40 million
 100 on a Virginia jurisdictional basis for the Commonwealth in any 12-month period, provided that any
 101 under-recovery amount of revenue requirements incurred in excess of \$40 million in a given 12-month
 102 period, limited to the under-recovery amount and the carrying cost, shall be deferred and recovered
 103 through the rate adjustment clause over up to three succeeding 12-month periods without regard to this
 104 limitation, and with the length of the amortization period being determined by the Commission; (iii)
 105 costs may begin accruing on July 1, 2020, but no approved rate adjustment clause charges shall be
 106 included in customer bills until July 1, 2022; (iv) any such costs shall be allocated to all customers of
 107 the utility in the Commonwealth as a non-bypassable charge, irrespective of the generation supplier of
 108 any such customer; and (v) any such costs that are allocated to the utility's system customers outside of
 109 the Commonwealth that are not actually recovered from such customers shall be included for cost
 110 recovery 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 CCR from the sites if beneficial use is anticipated to reduce the costs
 116 allocated to customers. The Commission shall issue its final order with regard to any such petition
 117 within six months of its filing, and in doing so shall determine whether the utility's plan for CCR unit

118 closure, and the projected costs associated therewith, are reasonable and prudent, taking into account
119 that closure in place of any CCR unit is not to be considered as an option. The Commission shall not
120 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 with 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.