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**HOUSE BILL NO. 443****AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources  
on February 5, 2020)

(Patron Prior to Substitute—Delegate Carroll Foy)

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.*

**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 no CCR unit at such plant submitted notification of completion of a final cap to the Department prior to January 1, 2019, the owner or operator shall complete closure 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 or corrective action 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

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

66 E. The owner or operator of any CCR unit subject to the provisions of subsection B shall accept and  
67 review proposals for the encapsulated beneficial use of CCR pursuant to the provisions of subsection B  
68 every four years beginning July 1, 2023. Any entity submitting such a proposal shall provide  
69 information from which the owner or operator can determine (i) the amount of CCR that will be utilized  
70 for encapsulated beneficial use; (ii) the cost of the proposed beneficial use of such CCR; and (iii) the  
71 guaranteed timeframe in which the CCR will be utilized.

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

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

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

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

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 Labor and Commerce, and the  
94 Director.

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

114 I. Any electric public utility subject to the requirements of this section may, without regard for  
115 whether it has petitioned for any rate adjustment clause pursuant to subdivision A 5 e of § 56-585.1,  
116 petition the Commission for approval of a plan for CCR unit closure at any or all of its CCR unit sites  
117 listed in subsection B. Any such plan shall take into account site-specific conditions and shall include  
118 proposals to beneficially reuse CCR from the sites if beneficial use is anticipated to reduce the costs  
119 allocated to customers. The Commission shall issue its final order with regard to any such petition  
120 within six months of its filing, and in doing so shall determine whether the utility's plan for CCR unit  
121 closure, and the projected costs associated therewith, are reasonable and prudent, taking into account

122 that closure in place of any CCR unit is not to be considered as an option. The Commission shall not  
123 consider plans that do not comply with subsection B.

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

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