

SECOND REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 917**  
99TH GENERAL ASSEMBLY

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Reported from the Committee on Commerce, Consumer Protection, Energy and the Environment, March 8, 2018, with recommendation that the Senate Committee Substitute do pass.

5851S.02C

ADRIANE D. CROUSE, Secretary.

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**AN ACT**

To repeal section 260.242, RSMo, and to enact in lieu thereof one new section relating to coal ash.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 260.242, RSMo, is repealed and one new section  
2 enacted in lieu thereof, to be known as section 260.242, to read as follows:

260.242. [All fly ash produced by coal combustion generating facilities  
2 shall be exempt from all solid waste permitting requirements of this chapter, if  
3 such ash is constructively reused or disposed of by a grout technique in any active  
4 or inactive noncoal, non-open-pit mining operation located in a city having a  
5 population of at least three hundred fifty thousand located in more than one  
6 county and is also located in a county of the first class without a charter form of  
7 government with a population of greater than one hundred fifty thousand and  
8 less than one hundred sixty thousand, provided said ash is not considered  
9 hazardous waste under the Missouri hazardous waste law.] **1. The department**  
10 **shall have the authority to promulgate rules and approve site-specific**  
11 **target levels for the management, closure, and post-closure of coal**  
12 **combustion residual (CCR) units in accordance with this section. As**  
13 **used in this section, "CCR unit" means a surface impoundment, utility**  
14 **waste landfill, or a coal combustion residual landfill. Except as**  
15 **otherwise provided in this section, such rules shall be as restrictive as,**  
16 **but not more restrictive than, 40 CFR 257, or successor regulations**  
17 **promulgated under Sections 1008(a)(3) and 4004(a) of the Resource**  
18 **Conservation and Recovery Act, as amended. Such rules shall allow the**

**EXPLANATION**—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 use of risk-based decision-making and establish target levels for soil  
20 and groundwater impacted by CCR constituents. The Missouri risk-  
21 based corrective action (MRBCA) rule, 10 CSR 25-18.010, and  
22 accompanying guidance shall be used to establish risk-based target  
23 levels for all CCR constituents to be left in place after closure and post-  
24 closure of a CCR unit. Target levels established under the MRBCA rule  
25 and guidance, and contained in plans approved and enforceable by the  
26 department, shall apply in lieu of any other soil or groundwater  
27 standard for the specified contaminants of concern. To the extent there  
28 is a conflict between this section and sections 644.143 or 644.026, this  
29 section shall prevail.

30 2. No later than December 31, 2018, the department shall  
31 promulgate rules applicable to CCR surface impoundments. Nothing in  
32 this section shall authorize the department to promulgate rules  
33 requiring:

34 (1) A construction or operating permit for CCR surface  
35 impoundment closure or corrective action; or

36 (2) Post-closure and groundwater monitoring for CCR surface  
37 impoundments that complete closure by removal of coal combustion  
38 residuals.

39 3. No later than December 31, 2018, the department shall amend  
40 and promulgate rules applicable to utility waste and CCR  
41 landfills. Such rules, including location restrictions and design  
42 standards, shall not be more restrictive than those set forth in 40 CFR  
43 257, with the following exceptions:

44 (1) Each operator or permittee of a utility waste or CCR landfill  
45 shall provide a financial assurance instrument in such amount and  
46 form as prescribed by the department under the authority of sections  
47 260.226 and 260.227; and

48 (2) Construction quality assurance measures for the construction  
49 and closure of utility waste or CCR landfills.

50 4. Until such time as the department has an approved and  
51 effective state program under Sections 1008(a)(3) and 4004(a) of the  
52 Resource Conservation and Recovery Act, the department has the  
53 authority to issue guidance and enter into enforceable agreements with  
54 site owners or operators to establish risk-based target levels, using all  
55 or part of the MRBCA program, for closure and corrective action at

56 CCR units. Nothing in this section shall prohibit the department,  
57 owners, or operators of CCR units that are exempt from 40 CFR 257  
58 from utilizing the MRBCA program.

59       5. Beginning January 1, 2019, the department shall require each  
60 owner, operator, or permittee of a CCR unit subject to 40 CFR 257 and  
61 not permitted as a utility waste landfill, to pay a one-time enrollment  
62 fee in the amount of sixty-two thousand dollars per CCR unit for the  
63 department's implementation of the state CCR program, except for CCR  
64 units having completed closure under 40 CFR 257 prior to December 31,  
65 2018, which are subject to a one-time enrollment fee of forty-eight  
66 thousand dollars per unit. Each owner, operator, or permittee of a CCR  
67 unit subject to 40 CFR 257 shall pay an annual fee of fifteen thousand  
68 dollars per unit for the department's ongoing implementation of the  
69 state CCR program. Annual fees shall not be assessed on CCR units  
70 that have closed prior to December 31, 2018. Annual fees shall  
71 terminate at the end of the CCR unit's post-closure period as long as  
72 the CCR unit is not under a requirement to complete a corrective  
73 action, or sooner, if authorized by the department.

74       6. Notwithstanding the statutory fee amounts set forth in this  
75 section to the contrary, beginning January 1, 2024, and every five years  
76 thereafter, the department shall conduct a comprehensive review of the  
77 program costs and fees assessed under this section in order to evaluate  
78 the sufficiency of such fee structure. Such review shall detail the costs  
79 incurred in connection with the management and closure of CCR  
80 units. Such review shall also include stakeholder meetings in order to  
81 solicit stakeholder input from industry representatives and interested  
82 parties. Upon completion of the comprehensive review, the department  
83 shall submit a report to the general assembly by December of the same  
84 year, and shall file a final order of rulemaking setting forth an  
85 amended fee structure based on the review. Fees established under  
86 this section shall not yield revenue greater than the cost of  
87 administering this section, and the rules adopted under this section  
88 shall be adequate to ensure sustained operation of the state CCR  
89 program.

90       7. All fees assessed under this section shall be paid by check or  
91 money order made payable to the department, and, unless otherwise  
92 required by this section, shall be due on January 1 of each calendar

93 year. Such fees shall be accompanied by a form provided by the  
94 department that shall include the following information:

- 95 (1) The name and address of the CCR unit operator or permittee;
- 96 (2) The reporting period;
- 97 (3) The name of the CCR unit that the fees apply to;
- 98 (4) The status of the CCR unit, being active, inactive, or closed;
- 99 (5) The amount of fees submitted;
- 100 (6) The signature of CCR unit owner or permittee attesting to the  
101 accuracy of the information provided; and
- 102 (7) The date the form is submitted.

103 8. All fees received under this section shall be credited to the  
104 "Coal Combustion Residuals Subaccount", which is hereby created, in  
105 the solid waste management fund. Moneys in the subaccount shall be  
106 used solely by the department for administering the provisions of this  
107 section. The state treasurer shall be the custodian of the subaccount  
108 and may approve disbursements from the fund in accordance with  
109 sections 30.170 and 30.180. Notwithstanding the provisions of section  
110 33.080 to the contrary, any moneys remaining in the subaccount at the  
111 end of the biennium shall not revert to the credit of the general  
112 revenue fund. The state treasurer shall invest moneys in the fund in  
113 the same manner as other funds are invested. Any interest and moneys  
114 earned on such investments shall be credited to the subaccount. The  
115 department may promulgate rules to ensure and verify that the fees  
116 imposed under this section are properly reported and transmitted to  
117 the department.

118 9. Interest shall be imposed on the moneys due the department  
119 at the rate of ten percent per annum from the prescribed due date until  
120 payment is actually made. Such interest shall be deposited to the  
121 credit of the coal combustion residuals subaccount of the solid waste  
122 management fund created under subsection 8 of this section.

123 10. The department may pursue penalties under 260.240 for  
124 failure to timely submit the fees imposed under this section.

125 11. The department shall have the right to examine or audit  
126 financial resources, CCR unit activity records, and other applicable  
127 records to verify the collection and transmittal of the fees established  
128 in this section. Records shall be made available for inspection by the  
129 department upon request. All records required under this section shall

130 be maintained by the operator or permittee of a CCR unit for at least  
131 three years, unless extended by the department through written  
132 request or automatically extended during the course of any unresolved  
133 enforcement action regarding the regulated activity.

134       12. The department of natural resources may promulgate rules  
135 to implement the provisions of this section. Any rule or portion of a  
136 rule, as that term is defined in section 536.010 that is created under the  
137 authority delegated in this section shall become effective only if it  
138 complies with and is subject to all of the provisions of chapter 536, and,  
139 if applicable, section 536.028. This section and chapter 536 are  
140 nonseverable and if any of the powers vested with the general assembly  
141 pursuant to chapter 536, to review, to delay the effective date, or to  
142 disapprove and annul a rule are subsequently held unconstitutional,  
143 then the grant of rulemaking authority and any rule proposed or  
144 adopted after August 28, 2018, shall be invalid and void.

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Bill

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