SECOND REGULAR SESSION

[PERFECTED]

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 917

99TH GENERAL ASSEMBLY

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

Senate Committee Substitute for Senate Bill No. 917, adopted March 27, 2018.

Taken up for Perfection March 27, 2018. Bill declared Perfected and Ordered Printed.

ADRIANE D. CROUSE, Secretary.

AN ACT

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

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Section A. Section 260.242, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 260.242, to read as follows: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 shall be exempt from all solid waste permitting requirements of this chapter, if such ash is constructively reused or disposed of by a grout technique in any active or inactive noncoal, non-open-pit mining operation located in a city having a population of at least three hundred fifty thousand located in more than one county and is also located in a county of the first class without a charter form of government with a population of greater than one hundred fifty thousand and less than one hundred sixty thousand, provided said ash is not considered hazardous waste under the Missouri hazardous waste law.] 1. The department shall have the authority to promulgate rules and approve site-specific target levels for the management, closure, and post-closure of coal combustion residual (CCR) units in accordance with this section. As used in this section, "CCR unit" means a surface impoundment, utility waste landfill, or a coal combustion residual landfill. Except as otherwise provided in this section, such rules shall be as restrictive as, but not more restrictive than, 40 CFR 257, or successor regulations.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.
promulgated under Sections 1008(a)(3) and 4004(a) of the Resource Conservation and Recovery Act, as amended. Such rules shall allow the use of risk-based decision-making and establish target levels for soil and groundwater impacted by CCR constituents. The Missouri risk-based corrective action (MRBCA) rule, 10 CSR 25-18.010, and accompanying guidance shall be used to establish risk-based target levels for all CCR constituents to be left in place after closure and post-closure of a CCR unit. Target levels established under the MRBCA rule and guidance, and contained in plans approved and enforceable by the department, shall apply in lieu of any other soil or groundwater standard for the specified contaminants of concern. To the extent there is a conflict between this section and sections 644.143 or 644.026, this section shall prevail.

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

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

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

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

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

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

4. Until such time as the department has an approved and effective state program under Sections 1008(a)(3) and 4004(a) of the Resource Conservation and Recovery Act, the department has the authority to issue guidance and enter into enforceable agreements with
site owners or operators to establish risk-based target levels, using all or part of the MRBCA program, for closure and corrective action at CCR units. Nothing in this section shall prohibit the department, owners, or operators of CCR units that are exempt from 40 CFR 257 from utilizing the MRBCA program.

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

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

7. All fees assessed under this section shall be paid by check or
money order made payable to the department, and, unless otherwise
required by this section, shall be due on January 1 of each calendar
year. Such fees shall be accompanied by a form provided by the
department that shall include the following information:

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

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

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

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

11. The department shall have the right to examine or audit
financial resources, CCR unit activity records, and other applicable
records to verify the collection and transmittal of the fees established
in this section. Records shall be made available for inspection by the department upon request. All records required under this section shall be maintained by the operator or permittee of a CCR unit for at least three years, unless extended by the department through written request or automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

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