

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4939-01
Bill No.: HB 2041
Subject: Waste - Solid; Department of Natural Resources
Type: Original
Date: January 17, 2018

Bill Summary: This proposal allows the Department of Natural Resources to promulgate rules for the management and closure of coal combustion residual surface impoundments and landfills.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Total Estimated Net Effect on General Revenue	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Solid Waste Management Fund - Coal Combustion Residual Subaccount	\$3,088,823	\$175,014	\$169,881
Total Estimated Net Effect on <u>Other</u> State Funds	\$3,088,823	\$175,014	\$169,881

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 9 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Solid Waste Management Fund - Coal Combustion Residual Subaccount	6 FTE	6 FTE	6 FTE
Total Estimated Net Effect on FTE	6 FTE	6 FTE	6 FTE

☐ Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Natural Resources (DNR)** assume this proposal provides authority for DNR to promulgate rules by December 31, 2018, applicable to Coal Combustion Residuals (CCR) surface impoundments including a provision to assess a one-time fee of \$62,000 per CCR unit not permitted as a utility waste landfill, and promulgate CCR landfill rules establishing a process for assessing and collecting an annual fee of \$15,000 per a CCR unit subject to 40 CFR 257.

§260.244

Due to the catastrophic collapse of large volume surface impoundments, the U.S. Environmental Protection Agency (EPA) published the final order of rule-making for the "Disposal of Coal Combustion Residuals from Electric Utilities" on April 17, 2015. This federal CCR rule governs disposal and management of fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from the combustion of coal at electric utilities. This rule finalizes national minimum criteria for existing and new CCR landfills and surface impoundments which are similar to those for municipal solid waste landfills. The current Missouri CCR law and regulations fall short of equivalency with this new federal rule.

Missouri is the 12th largest coal energy producing state in the United States. Based on information compiled by DNR staff, there are currently nineteen (19) utilities in Missouri which have coal-fired power plants. An assessment of CCR surface impoundments in Missouri identified forty-four (44) CCR impoundments at sixteen (16) sites in Missouri (not all plant sites have surface impoundments). The final rule allows for self-implementation and self-reporting via the Internet by owners/operators of utility waste landfills and surface impoundments. Because of the nature and volume of these waste materials, ground and surface water can become contaminated if the waste materials are mismanaged and a public nuisance can be created through improper handling and disposal of the mountains of fly ash generated each year by these facilities.

The federal CCR rule is self-implementing; no federal or state permit is required of a CCR landfill or surface impoundment to operate. Owner/operators are expected to maintain operational transparency through disclosure of certain information on a publicly accessible Internet website. Such information must demonstrate compliance with the federal rule. The bill would provide authority to DNR to promulgate adequate rules by December 31, 2018, for addressing both CCR landfills and surface impoundments and fund DNR oversight.

ASSUMPTION (continued)

§260.242

Section is to be repealed

§260.244

- Establishes the general authority for DNR to conduct rule-making in order to establish a state CCR program and allows for the use of risk-based decision making for management, closure, and post-closure of CCR units.
- Establishes a time-frame for promulgating rules applicable to CCR surface impoundments and establishes certain limitations related to those rules regarding applicability.
- Establishes a time-frame for promulgating rules applicable to utility waste and CCR landfills and establishes certain limitations related to those rules regarding applicability.
- Authorizes DNR to work with CCR units through guidance and enforceable agreements until the rule-making in Sections 2 and 3 are effective.
- Requires each operator or permittee of a utility waste or CCR landfill to provide a financial assurance instrument in such amount and form as prescribed by DNR under the authority of sections 260.226 and 260.227.
- Establishes a one-time enrollment fee of \$62,000 per applicable CCR unit.
- Establishes an annual fee of \$15,000 per applicable CCR unit.
- Establishes the "Coal Combustion Residuals Subaccount".
- Requires interest earned by the funds within the subaccount to remain within the subaccount.
- Provides DNR authority to conduct rule-making related to the above fees.
- Grants DNR authority to pursue interest of past due fees until payment is made.
- Allows DNR to pursue penalties for failure to report and/or pay fees.
- Grants DNR authority to examine and audit financial records to ensure appropriate fees are reported and remitted.

The proposed language includes a provision requiring an annual report to be completed by DNR assessing actual expenditures and revenues. In conjunction with this annual report requirement, DNR must also convene a task force at least once every five years to evaluate the sufficiency of the fee structure. Funding provided by the one-time enrollment fee is intended to establish the initial long term operating fund for "DNR to oversee the full 30 year post-closure period associated with these CCR units. Further, an annual fee is intended to cover the ongoing operational costs associated with oversight of the CCR program.

ASSUMPTION (continued)

CCR Program Implementation

In order to fully implement the permitting program as required by the federal CCR rule, it is estimated that DNR would require a total of six (6) FTE.

Personnel

Position	FTE	Duties
Environmental Engineer I/II	2	Permit modifications, groundwater monitoring reviews, groundwater corrective action planning and oversight, Inspections, website review, new cell construction review and analysis
Environmental Specialist I/II/III	1	Groundwater monitoring, groundwater report reviews, inspections as needed
Environmental Specialist I/II/III	2	Quarterly inspections for each of the 37 ponds, beneficial use inspections, investigation efforts
Geologist I/II/III	1	Groundwater monitoring, groundwater corrective action, and geological and hydrological assessments for the siting of new CCR units

ASSUMPTION (continued)

Revenue

Unit Description	Count of Units	One Time Fee \$62,000/unit	Annual Fee \$15,000/unit
Active/Not Yet Constructed Landfills	10	N/A	\$150,000
Operating Impoundments	37	\$2,294,000	\$555,000
Impoundment Closed after 10-19-2015 (subject to CFR)	7	\$434,000	N/A
Total	54	\$2,728,000	\$705,000

	Number of CCR Units	2019	2020	2021
One-Time Fee (\$62,000/unit)	44	\$2,728,000	N/A	N/A
Annual Fee (\$15,000/unit)	47	\$705,000	\$705,000	\$705,000
Total		\$3,433,000	\$705,000	\$705,000

Officials from the **Office of the Secretary of State (SOS)** assume many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding

ASSUMPTION (continued)

for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process.

Officials from the **Joint Committee on Administrative Rules** state that the proposal is not anticipated to cause a fiscal impact to their agency beyond its current appropriation.

<u>FISCAL IMPACT - State Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021
SOLID WASTE MANAGEMENT FUND - COAL COMBUSTION RESIDUALS SUBACCOUNT			
<u>Revenue</u> - DNR - fees for CCR units	\$3,433,000	\$705,000	\$705,000
<u>Costs</u> - DNR			
Personal Services	(\$165,330)	(\$333,967)	(\$337,306)
Fringe Benefits	(\$103,043)	(\$163,916)	(\$164,908)
Equipment and Expense	<u>(\$75,804)</u>	<u>(\$32,103)</u>	<u>(\$32,905)</u>
<u>Total Expenses</u> - DNR	<u>(\$344,177)</u>	<u>(\$529,986)</u>	<u>(\$535,119)</u>
FTE Change - DNR	6 FTE	6 FTE	6 FTE
ESTIMATED NET EFFECT ON THE SOLID WASTE MANAGEMENT FUND - COAL COMBUSTION RESIDUAL SUBACCOUNT	<u>\$3,088,823</u>	<u>\$175,014</u>	<u>\$169,881</u>
Estimated Net FTE Change on the Solid Waste Management Fund - Coal Combustion Residual Subaccount	6 FTE	6 FTE	6 FTE

FISCAL IMPACT - Local Government

FY 2019
(10 Mo.)

FY 2020

FY 2021

\$0

\$0

\$0

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

The proposed legislation appears to have no direct fiscal impact.

This legislation is not federally mandated and would not require additional capital improvements or rental space.

This program is a duplicate of the Department of Natural Resources' Solid Waste Management Program which currently implements the laws and regulations applying to utility waste landfills under the authority of the Missouri Solid Waste Management Law and regulations. Landfills where coal combustion residuals are disposed of are classified as utility waste landfills under state statutory and regulatory definitions and are subject to regulation accordingly.

The proposed bill directs DNR to amend or create regulations that are as protective but not more restrictive (with limited exceptions) than 40 CFR Part 257 or successor regulations promulgated under Section 1008(a)(3) and 4004(a) of the Resource Conservation and Recovery Act (RCRA).

SOURCES OF INFORMATION

Department of Natural Resources
Office of the Secretary of State
Joint Committee on Administrative Rules

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