SENATE BILL 250

DEPARTMENT OF THE ENVIRONMENT – FEES, PENALTIES, FUNDING, AND REGULATION

OPPOSE

HOUSE ENVIRONMENT AND TRANSPORTATION COMMITTEE

April 1, 2025

NRG Energy, Inc. ("NRG") submits these comments in **opposition** to **SB 250 – DEPARTMENT OF THE ENVIRONMENT – FEES, PENALTIES, FUNDING, AND REGULATION.**

NRG is the leading essential home services company fueled by market-leading brands, proprietary technologies and complementary sales channels. We offer a unique whole home experience to more than 8 million North American customers. NRG's generation fleet is aligned for a more sustainable energy future. The true strength of our fleet is best reflected in the diversity of our generation sources, as well as the geographic alignment where our retail customers live and work. Matching where we create power with where our customers consume it leads to market synergies that benefit everyone. The ability to right-size our fleet and rebalance our portfolio is the ultimate measure of strength, flexibility and value. NRG understands energy – a simple fact that is reflected in how we generate power and the diversity of our facilities.

NRG raises concerns about this bill as it relates to the concerns we provided in HB405/SB425. NRG owns and operates coal combustion residual (CCR) landfills and surface impoundments which are subject to the 2015 and 2024 Federal CCR Rules under 40 CFR 257. NRG has deep knowledge and experience in coal combustion management – which is the subject of

HB902/SB425 – and offers the following observations about the bill and its impacts. As a reminder, we have provided below our comments on HB902/SB425 because the new fees proposed in SB250 are tied.

There is no environmental harm record to support the need for a fee.

- HB 902 provides no reason or justification for a fee to be applied to landfill owners or operators. Typically, such a fee would be to manage a program, offset perceived harm, etc. HB 902 does not define what harm it is intended to alleviate.
- The fee structure appears arbitrary and unfounded. Landfills are on private property, permitted by a regulatory authority, and subject to environmental regulation which includes 30 years of post-closure care, secured by a financial assurance mechanism. There is simply no need for an additional fee to assure funds will be available for continued compliance.
- Facilities in Maryland subject to federal regulation have defined compliance strategies based on current regulation, feasibility, and cost and these decisions initiated. Economically, HB 902 may contradict decision making that is already applied.
- HB 902 places great, unforeseen, and unwarranted financial harm to a facility in compliance with existing regulations. For example, consider a 10M ton landfill already capped and closed, where the owners would have likely spent in the realm of $15M to close the facility in compliance with regulatory requirements designed to prevent environmental harm and protect public health. Regardless, HB 902 would add a $23M fee to that facility, an unjustified result that is nothing short of punitive.
- A Landfill is defined as an acceptable permanent storage of a material whereas an impound is typically temporary storage while in operation until closure. HB 902 attempts to place an after the fact "fee" on permanent storage for either type of unit. The practice of permanent storage has been accepted nationally since the inception of coal based electric generation, thus a fee on an accepted practice in compliance with regulation is unprecedented.

Federal Programs already assure compliance and assure no environmental harm.

- The U.S. Environmental Protection Agency (EPA) has designated the CCR Material as Non-Hazardous and determined that permanent storage of this non-hazardous material is an acceptable and common practice. A landfill or impoundment closure that is compliant with Federal Regulations codified under 40 CFR 257.102 or applicable State Regulations must meet criteria to assure there is no environmental risk or harm and there is no regulatory record to suggest otherwise. Thus, the fee proposed in HB 902 is redundant and does not address any perceived harm.
- The 2015 CCR Rule, amended in 2018, 2020, and 2024 mandates that owners and/or operators of CCR facilities adhere to strict requirements for closure of a CCR Unit once the unit has reached capacity. While all landfills are designed for closure in place, surface impoundments can apply final closure by removal as well as closure in place, and either

option is deemed compliant and protective of the environment based on 40 CFR 257.102. These options, provided by EPA are designed to protect the human health and the environment, including exposure to receptors. EPA's record on risk and exposure have defined permanent storage an acceptable option for the disposal of CCR material.
- Maryland has not considered seeking jurisdiction of the Federal CCR Rule; thus the agency and regulated community are subject to the federal process. The federal process which has CCR jurisdiction, does not apply a fee structure.

Environmental Fee Structures typically define a dynamic or static state.

- HB 902 does not define the basis of the fee. For example, air emission fees are dynamic based on actual emissions. Other fees from other programs are based on the static condition of a facility and "cast in stone". HB 902 is unclear as to whether the proposed fee is a one-time fee, an annual fee, or even the basis for the fee.
- Landfills are dynamic and operate in three scenarios, adding disposal (dynamic), capped and closed (static), or harvesting (dynamic). This rule does not define the measure or address the final state of the landfill.
- Like the Regional Greenhouse Gas Initiative (RGGI) for CO2, HB 902 introduces a "floor" however, there is no procedure for pricing or program management. While HB 902 appears to adopt the RGGI concept, it does not include any program details on oversite, management, collection process, or where the funds would go.

Implementation Uncertainty

- It is unclear whether the proposed fee is based on CCR generation such as a fee to a plant burning coal based on the quantity of ash at the silo or a fee based on the quantity that is disposed and not otherwise beneficially used, such as what goes into the landfill, or both. HB 902 states each will be considered.
- It is unclear if HB 902 applies prospectively only or would be retroactive to existing/historic landfill sites.
- It is unclear whether the proposed fee would be an annual dynamic fee, or a one-time fee.
- It is unclear how HB 902 interacts with the 2024 Legacy Rule, specifically it is unclear if it applies to 2015 regulated units or to any ash pile that may be on a facility but not in a defined CCR Unit. The scope of applicability is entirely unclear.
- The federal rules are subject to change and could include changes to the definition of a landfill, a CCR Management Unit, an ash pile, etc. It is unclear how Maryland will address federal rule changes, and it is therefore premature for the Maryland Department of Environment (MDE) to try and define the applicability and the calculation for a ton of coal ash at a facility at this time.
- The Federal regulations exempt CCR Material that has been placed off-site in beneficial use applications. HB 902 exempts beneficial use for cement products and mine

reclamation, however such exemption will be determined “in a manor acceptable to the department”. This language is vague and undefined.

- HB 902 states “the department shall consider” but there is no definitive definition of what shall be considered and how it shall be considered.

Conclusion

For all the reasons explained above, NRG strongly opposes SB250 as it relates to HB 902 and urges the Committee to give it an **unfavorable** report.

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