

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2273
OFFERED BY M . _____**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Coal Residuals Reuse
3 and Management Act”.

**4 SEC. 2. AMENDMENT TO SUBTITLE D OF THE SOLID WASTE
5 DISPOSAL ACT.**

6 Subtitle D of the Solid Waste Disposal Act (42
7 U.S.C. 6941 et seq.) is amended by adding at the end
8 the following new section:

**9 “SEC. 4011. MANAGEMENT AND DISPOSAL OF COAL COM-
10 BUSTION RESIDUALS.**

11 “(a) STATE PERMIT PROGRAMS FOR COAL COMBUS-
12 TION RESIDUALS.—Each State may adopt and implement
13 a coal combustion residuals permit program.

14 “(b) STATE ACTIONS.—

15 “(1) NOTIFICATION.—Not later than 6 months
16 after the date of enactment of this section (except
17 as provided by the deadline identified under sub-
18 section (d)(2)(B)), the Governor of each State shall

1 notify the Administrator, in writing, whether such
2 State will adopt and implement a coal combustion
3 residuals permit program.

4 “(2) CERTIFICATION.—

5 “(A) IN GENERAL.—Not later than 36
6 months after the date of enactment of this sec-
7 tion (except as provided in subsections (f)(1)(A)
8 and (f)(1)(C)), in the case of a State that has
9 notified the Administrator that it will imple-
10 ment a coal combustion residuals permit pro-
11 gram, the head of the lead State agency respon-
12 sible for implementing the coal combustion re-
13 siduals permit program shall submit to the Ad-
14 ministrator a certification that such coal com-
15 bustion residuals permit program meets the
16 specifications described in subsection (c)(1).

17 “(B) CONTENTS.—A certification sub-
18 mitted under this paragraph shall include—

19 “(i) a letter identifying the lead State
20 agency responsible for implementing the
21 coal combustion residuals permit program,
22 signed by the head of such agency;

23 “(ii) identification of any other State
24 agencies involved with the implementation

1 of the coal combustion residuals permit
2 program;

3 “(iii) a narrative description that pro-
4 vides an explanation of how the State will
5 ensure that the coal combustion residuals
6 permit program meets the requirements of
7 this section;

8 “(iv) a legal certification that the
9 State has, at the time of certification, fully
10 effective statutes, regulations, or guidance
11 necessary to implement a coal combustion
12 residuals permit program that meets the
13 specifications described in subsection
14 (c)(1); and

15 “(v) copies of State statutes, regula-
16 tions, and guidance described in clause
17 (iv).

18 “(3) MAINTENANCE OF 4005(c) OR 3006 PRO-
19 GRAM.—In order to adopt or implement a coal com-
20 bustion residuals permit program under this section
21 (including pursuant to subsection (f)), the State
22 agency responsible for implementing a coal combus-
23 tion residuals permit program in a State shall main-
24 tain an approved program under section 4005(c) or
25 an authorized program under section 3006.

1 “(c) PERMIT PROGRAM SPECIFICATIONS.—

2 “(1) MINIMUM REQUIREMENTS.—The specifica-
3 tions described in this subsection for a coal combus-
4 tion residuals permit program are as follows:

5 “(A) The revised criteria described in
6 paragraph (2) shall apply to a coal combustion
7 residuals permit program, except as provided in
8 paragraph (3).

9 “(B) Each structure shall be, in accord-
10 ance with generally accepted engineering stand-
11 ards for the structural integrity of such struc-
12 tures, designed, constructed, and maintained to
13 provide for containment of the maximum vol-
14 umes of coal combustion residuals appropriate
15 for the structure.

16 “(C) If a structure that is classified as
17 posing a high hazard potential pursuant to the
18 guidelines published by the Federal Emergency
19 Management Agency entitled ‘Federal Guide-
20 lines for Dam Safety: Hazard Potential Classi-
21 fication System for Dams’ (FEMA Publication
22 Number 333) is determined by the head of the
23 agency responsible for implementing the coal
24 combustion residuals permit program to be defi-
25 cient with respect to the structural integrity re-

1 requirement in subparagraph (B), the head of
2 such agency has authority to require action to
3 correct the deficiency. If the identified defi-
4 ciency is not corrected, the head of such agency
5 has authority to require that the structure close
6 in accordance with subsection (h).

7 “(D) New structures that first receive coal
8 combustion residuals after the date of enact-
9 ment of this section shall be constructed with a
10 base located a minimum of two feet above the
11 upper limit of the natural water table.

12 “(E) In the case of a coal combustion re-
13 siduals permit program implemented by a
14 State, the State has the authority to inspect
15 structures and implement and enforce such per-
16 mit program.

17 “(2) REVISED CRITERIA.—The revised criteria
18 described in this paragraph are—

19 “(A) the revised criteria for design,
20 groundwater monitoring, corrective action, clo-
21 sure, and post-closure, as appropriate for struc-
22 tures, including—

23 “(i) for new structures, and lateral ex-
24 pansions of existing structures, that first
25 receive coal combustion residuals after the

1 date of enactment of this section, the re-
2 vised criteria regarding design require-
3 ments described in section 258.40 of title
4 40, Code of Federal Regulations, as appro-
5 priate; and

6 “(ii) for all structures that receive
7 coal combustion residuals after the date of
8 enactment of this section, the revised cri-
9 teria regarding groundwater monitoring re-
10 quirements described in subpart E of part
11 258 of title 40, Code of Federal Regula-
12 tions, as appropriate; and

13 “(B) the revised criteria for location re-
14 strictions described in—

15 “(i) for new structures, and lateral ex-
16 pansions of existing structures, that first
17 receive coal combustion residuals after the
18 date of enactment of this section, sections
19 258.11 through 258.15 of title 40, Code of
20 Federal Regulations, as appropriate; and

21 “(ii) for existing structures that re-
22 ceive coal combustion residuals after the
23 date of enactment of this section, sections
24 258.11 and 258.15 of title 40, Code of
25 Federal Regulations, as appropriate.

1 “(3) APPLICABILITY OF CERTAIN REQUIRE-
2 MENTS.—If a State determines that one or more of
3 the requirements of the revised criteria described in
4 paragraph (2) is not needed for the management of
5 coal combustion residuals in that State, the State
6 may decline to apply such requirement as part of its
7 coal combustion residuals permit program. If a State
8 declines to apply a requirement under this para-
9 graph, the State shall include in the certification
10 under subsection (b)(2) a description of such re-
11 quirement and the reasons such requirement is not
12 needed in the State. If the Administrator determines
13 that a State determination under this paragraph
14 does not accurately reflect the needs for the manage-
15 ment of coal combustion residuals in the State, the
16 Administrator may treat such State determination
17 as a deficiency under subsection (d).

18 “(d) WRITTEN NOTICE AND OPPORTUNITY TO REM-
19 EDY.—

20 “(1) IN GENERAL.—The Administrator shall
21 provide to a State written notice and an opportunity
22 to remedy deficiencies in accordance with paragraph
23 (2) if at any time the State—

24 “(A) does not satisfy the notification re-
25 quirement under subsection (b)(1);

1 “(B) has not submitted a certification
2 under subsection (b)(2);

3 “(C) does not satisfy the maintenance re-
4 quirement under subsection (b)(3); or

5 “(D) is not implementing a coal combus-
6 tion residuals permit program that meets the
7 specifications described in subsection (c)(1).

8 “(2) CONTENTS OF NOTICE; DEADLINE FOR RE-
9 SPONSE.—A notice provided under this subsection
10 shall—

11 “(A) include findings of the Administrator
12 detailing any applicable deficiencies in—

13 “(i) compliance by the State with the
14 notification requirement under subsection
15 (b)(1);

16 “(ii) compliance by the State with the
17 certification requirement under subsection
18 (b)(2);

19 “(iii) compliance by the State with the
20 maintenance requirement under subsection
21 (b)(3); and

22 “(iv) the State coal combustion re-
23 siduals permit program in meeting the
24 specifications described in subsection
25 (c)(1); and

1 “(B) identify, in collaboration with the
2 State, a reasonable deadline, which shall be not
3 sooner than 6 months after the State receives
4 the notice, by which the State shall remedy the
5 deficiencies detailed under subparagraph (A).

6 “(e) IMPLEMENTATION BY ADMINISTRATOR.—

7 “(1) IN GENERAL.—The Administrator shall
8 implement a coal combustion residuals permit pro-
9 gram for a State only in the following cir-
10 cumstances:

11 “(A) If the Governor of such State notifies
12 the Administrator under subsection (b)(1) that
13 such State will not adopt and implement such
14 a permit program.

15 “(B) If such State has received a notice
16 under subsection (d) and, after any review
17 brought by the State under section 7006, fails,
18 by the deadline identified in such notice under
19 subsection (d)(2)(B), to remedy the deficiencies
20 detailed in such notice under subsection
21 (d)(2)(A).

22 “(C) If such State informs the Adminis-
23 trator, in writing, that such State will no longer
24 implement such a permit program.

1 “(2) REQUIREMENTS.—If the Administrator
2 implements a coal combustion residuals permit pro-
3 gram for a State under paragraph (1), such permit
4 program shall consist of the specifications described
5 in subsection (c)(1).

6 “(3) ENFORCEMENT.—If the Administrator im-
7 plements a coal combustion residuals permit pro-
8 gram for a State under paragraph (1), the authori-
9 ties referred to in section 4005(c)(2)(A) shall apply
10 with respect to coal combustion residuals and struc-
11 tures and the Administrator may use such authori-
12 ties to inspect, gather information, and enforce the
13 requirements of this section in the State.

14 “(f) STATE CONTROL AFTER IMPLEMENTATION BY
15 ADMINISTRATOR.—

16 “(1) STATE CONTROL.—

17 “(A) NEW ADOPTION AND IMPLEMENTA-
18 TION BY STATE.—For a State for which the
19 Administrator is implementing a coal combus-
20 tion residuals permit program under subsection
21 (e)(1)(A), the State may adopt and implement
22 such a permit program by—

23 “(i) notifying the Administrator that
24 the State will adopt and implement such a
25 permit program;

1 “(ii) not later than 6 months after the
2 date of such notification, submitting to the
3 Administrator a certification under sub-
4 section (b)(2); and

5 “(iii) receiving from the Adminis-
6 trator—

7 “(I) a determination that the
8 State coal combustion residuals per-
9 mit program meets the specifications
10 described in subsection (c)(1); and

11 “(II) a timeline for transition of
12 control of the coal combustion residu-
13 als permit program.

14 “(B) REMEDYING DEFICIENT PERMIT PRO-
15 GRAM.—For a State for which the Adminis-
16 trator is implementing a coal combustion re-
17 siduals permit program under subsection
18 (e)(1)(B), the State may adopt and implement
19 such a permit program by—

20 “(i) remedying the deficiencies de-
21 tailed in the notice provided under sub-
22 section (d)(2)(A); and

23 “(ii) receiving from the Adminis-
24 trator—

1 “(I) a determination that the de-
2 ficiencies detailed in such notice have
3 been remedied; and

4 “(II) a timeline for transition of
5 control of the coal combustion residu-
6 als permit program.

7 “(C) RESUMPTION OF IMPLEMENTATION
8 BY STATE.—For a State for which the Adminis-
9 trator is implementing a coal combustion re-
10 siduals permit program under subsection
11 (e)(1)(C), the State may adopt and implement
12 such a permit program by—

13 “(i) notifying the Administrator that
14 the State will adopt and implement such a
15 permit program;

16 “(ii) not later than 6 months after the
17 date of such notification, submitting to the
18 Administrator a certification under sub-
19 section (b)(2); and

20 “(iii) receiving from the Adminis-
21 trator—

22 “(I) a determination that the
23 State coal combustion residuals per-
24 mit program meets the specifications
25 described in subsection (c)(1); and

1 “(II) a timeline for transition of
2 control of the coal combustion residu-
3 als permit program.

4 “(2) REVIEW OF DETERMINATION.—

5 “(A) DETERMINATION REQUIRED.—The
6 Administrator shall make a determination
7 under paragraph (1) not later than 90 days
8 after the date on which the State submits a cer-
9 tification under paragraph (1)(A)(ii) or
10 (1)(C)(ii), or notifies the Administrator that the
11 deficiencies have been remedied pursuant to
12 paragraph (1)(B)(i), as applicable.

13 “(B) REVIEW.—A State may obtain a re-
14 view of a determination by the Administrator
15 under paragraph (1) as if such determination
16 was a final regulation for purposes of section
17 7006.

18 “(3) IMPLEMENTATION DURING TRANSITION.—

19 “(A) EFFECT ON ACTIONS AND ORDERS.—
20 Actions taken or orders issued pursuant to a
21 coal combustion residuals permit program shall
22 remain in effect if—

23 “(i) a State takes control of its coal
24 combustion residuals permit program from
25 the Administrator under paragraph (1); or

1 “(ii) the Administrator takes control
2 of a coal combustion residuals permit pro-
3 gram from a State under subsection (e).

4 “(B) CHANGE IN REQUIREMENTS.—Sub-
5 paragraph (A) shall apply to such actions and
6 orders until such time as the Administrator or
7 the head of the lead State agency responsible
8 for implementing the coal combustion residuals
9 permit program, as applicable—

10 “(i) implements changes to the re-
11 quirements of the coal combustion residu-
12 als permit program with respect to the
13 basis for the action or order; or

14 “(ii) certifies the completion of a cor-
15 rective action that is the subject of the ac-
16 tion or order.

17 “(4) SINGLE PERMIT PROGRAM.—If a State
18 adopts and implements a coal combustion residuals
19 permit program under this subsection, the Adminis-
20 trator shall cease to implement the permit program
21 implemented under subsection (e) for such State.

22 “(g) EFFECT ON DETERMINATION UNDER 4005(C)
23 OR 3006.—The Administrator shall not consider the im-
24 plementation of a coal combustion residuals permit pro-
25 gram by the Administrator under subsection (e) in making

1 a determination of approval for a permit program or other
2 system of prior approval and conditions under section
3 4005(e) or of authorization for a program under section
4 3006.

5 “(h) CLOSURE.—If it is determined, pursuant to a
6 coal combustion residuals permit program, that a struc-
7 ture should close, the time period for the closure of such
8 structure shall be set forth, in a schedule, in a closure
9 plan that takes into account the site-specific characteris-
10 ties of the structure to be closed.

11 “(i) AUTHORITY.—

12 “(1) STATE AUTHORITY.—Nothing in this sec-
13 tion shall preclude or deny any right of any State to
14 adopt or enforce any regulation or requirement re-
15 specting coal combustion residuals that is more
16 stringent or broader in scope than a regulation or
17 requirement under this section.

18 “(2) AUTHORITY OF THE ADMINISTRATOR.—

19 “(A) IN GENERAL.—Except as provided in
20 subsection (e) of this section and section 6005
21 of this title, the Administrator shall, with re-
22 spect to the regulation of coal combustion re-
23 siduals, defer to the States pursuant to this sec-
24 tion.

1 “(B) IMMINENT HAZARD.—Nothing in this
2 section shall be construed to affect the author-
3 ity of the Administrator under section 7003
4 with respect to coal combustion residuals.

5 “(j) MINE RECLAMATION ACTIVITIES.—A coal com-
6 bustion residuals permit program implemented under sub-
7 section (e) by the Administrator shall not apply to the uti-
8 lization, placement, and storage of coal combustion residu-
9 als at surface mining and reclamation operations.

10 “(k) DEFINITIONS.—In this section:

11 “(1) COAL COMBUSTION RESIDUALS.—The
12 term ‘coal combustion residuals’ means—

13 “(A) the solid wastes listed in section
14 3001(b)(3)(A)(i), including recoverable mate-
15 rials from such wastes;

16 “(B) coal combustion wastes that are co-
17 managed with wastes produced in conjunction
18 with the combustion of coal, provided that such
19 wastes are not segregated and disposed of sepa-
20 rately from the coal combustion wastes and
21 comprise a relatively small proportion of the
22 total wastes being disposed in the structure;

23 “(C) fluidized bed combustion wastes;

24 “(D) wastes from the co-burning of coal
25 with non-hazardous secondary materials pro-

1 vided that coal makes up at least 50 percent of
2 the total fuel burned; and

3 “(E) wastes from the co-burning of coal
4 with materials described in subparagraph (A)
5 that are recovered from monofills.

6 “(2) COAL COMBUSTION RESIDUALS PERMIT
7 PROGRAM.—The term ‘coal combustion residuals
8 permit program’ means a permit program or other
9 system of prior approval and conditions that is
10 adopted by or for a State for the management and
11 disposal of coal combustion residuals to the extent
12 such activities occur in structures in such State.

13 “(3) STRUCTURE.—The term ‘structure’ means
14 a landfill, surface impoundment, or other land-based
15 unit which may receive coal combustion residuals.

16 “(4) REVISED CRITERIA.—The term ‘revised
17 criteria’ means the criteria promulgated for munic-
18 ipal solid waste landfill units under section 4004(a)
19 and under section 1008(a)(3), as revised under sec-
20 tion 4010(c).”.

21 **SEC. 3. 2000 REGULATORY DETERMINATION.**

22 Nothing in this Act, or the amendments made by this
23 Act, shall be construed to alter in any manner the Envi-
24 ronmental Protection Agency’s regulatory determination
25 entitled “Notice of Regulatory Determination on Wastes

1 from the Combustion of Fossil Fuels”, published at 65
2 Fed. Reg. 32214 (May 22, 2000), that the fossil fuel com-
3 bustion wastes addressed in that determination do not
4 warrant regulation under subtitle C of the Solid Waste
5 Disposal Act (42 U.S.C. 6921 et seq.).

