

**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. If a structure is determined
16 by the head of the agency responsible for imple-
17 menting the coal combustion residuals permit
18 program to be deficient, the head of such agen-
19 cy has authority to require action to correct the
20 deficiency. If the identified deficiency is not cor-
21 rected, the head of such agency has authority to
22 require that the structure close in accordance
23 with subsection (h).

24 “(C) The coal combustion residuals permit
25 program shall apply the revised criteria promul-

1 gated pursuant to section 4010(c) for location,
2 design, groundwater monitoring, corrective ac-
3 tion, financial assurance, closure and post-clo-
4 sure described in paragraph (2) and the speci-
5 fications described in this paragraph to surface
6 impoundments.

7 “(D) Constituents for detection monitoring
8 shall include boron, chloride, conductivity, fluo-
9 ride, pH, sulphate, sulfide, and total dissolved
10 solids.

11 “(E) If a structure that is classified as
12 posing a high hazard potential pursuant to the
13 guidelines published by the Federal Emergency
14 Management Agency entitled ‘Federal Guide-
15 lines for Dam Safety: Hazard Potential Classi-
16 fication System for Dams’ (FEMA Publication
17 Number 333) is determined by the head of the
18 agency responsible for implementing the coal
19 combustion residuals permit program to be defi-
20 cient with respect to the structural integrity re-
21 quirement in subparagraph (B), the head of
22 such agency has authority to require action to
23 correct the deficiency. If the identified defi-
24 ciency is not corrected, the head of such agency

1 has authority to require that the structure close
2 in accordance with subsection (h).

3 “(F) New structures that first receive coal
4 combustion residuals after the date of enact-
5 ment of this section shall be constructed with a
6 base located a minimum of two feet above the
7 upper limit of the natural water table.

8 “(G) In the case of a coal combustion re-
9 siduals permit program implemented by a
10 State, the State has the authority to inspect
11 structures and implement and enforce such per-
12 mit program.

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

15 “(A) the revised criteria for design,
16 groundwater monitoring, corrective action, clo-
17 sure, and post-closure, for structures, includ-
18 ing—

19 “(i) for new structures, and lateral ex-
20 pansions of existing structures, that first
21 receive coal combustion residuals after the
22 date of enactment of this section, the re-
23 vised criteria regarding design require-
24 ments described in section 258.40 of title
25 40, Code of Federal Regulations; and

1 “(ii) for all structures that receive
2 coal combustion residuals after the date of
3 enactment of this section, the revised cri-
4 teria regarding groundwater monitoring re-
5 quirements described in subpart E of part
6 258 of title 40, Code of Federal Regula-
7 tions;

8 “(B) the revised criteria for location re-
9 strictions described in—

10 “(i) for new structures, and lateral ex-
11 pansions of existing structures, that first
12 receive coal combustion residuals after the
13 date of enactment of this section, sections
14 258.11 through 258.15 of title 40, Code of
15 Federal Regulations; and

16 “(ii) for existing structures that re-
17 ceive coal combustion residuals after the
18 date of enactment of this section, sections
19 258.11 and 258.15 of title 40, Code of
20 Federal Regulations;

21 “(C) for all structures that receive coal
22 combustion residuals after the date of enact-
23 ment of this section, the revised criteria for air
24 quality described in section 258.24 of title 40,
25 Code of Federal Regulations; and

1 “(D) for all structures that receive coal
2 combustion residuals after the date of enact-
3 ment of this section, the revised criteria for fi-
4 nancial assurance described in subpart G of
5 part 258 of title 40, Code of Federal Regula-
6 tions.

7 “(3) APPLICABILITY OF CERTAIN REQUIRE-
8 MENTS.—A State may determine that one or more
9 of the requirements of the revised criteria described
10 in paragraph (2) is not needed for the management
11 of coal combustion residuals in that State, and may
12 decline to apply such requirement as part of its coal
13 combustion residuals permit program. If a State de-
14 clines to apply a requirement under this paragraph,
15 the State shall include in the certification under sub-
16 section (b)(2) a description of such requirement and
17 the reasons such requirement is not needed in the
18 State. If the Administrator determines that a State
19 determination under this paragraph does not accu-
20 rately reflect the needs for the management of coal
21 combustion residuals in the State, the Administrator
22 may treat such State determination as a deficiency
23 under subsection (d).

24 “(d) WRITTEN NOTICE AND OPPORTUNITY TO REM-
25 EDY.—

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

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

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

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

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

14 “(2) CONTENTS OF NOTICE; DEADLINE FOR RE-
15 SPONSE.—A notice provided under this subsection
16 shall—

17 “(A) include findings of the Administrator
18 detailing any applicable deficiencies in—

19 “(i) compliance by the State with the
20 notification requirement under subsection
21 (b)(1);

22 “(ii) compliance by the State with the
23 certification requirement under subsection
24 (b)(2);

1 “(iii) compliance by the State with the
2 maintenance requirement under subsection
3 (b)(3); and

4 “(iv) the State coal combustion re-
5 siduals permit program in meeting the
6 specifications described in subsection
7 (c)(1); and

8 “(B) identify, in collaboration with the
9 State, a reasonable deadline, which shall be not
10 sooner than 6 months after the State receives
11 the notice, by which the State shall remedy the
12 deficiencies detailed under subparagraph (A).

13 “(e) IMPLEMENTATION BY ADMINISTRATOR.—

14 “(1) IN GENERAL.—The Administrator shall
15 implement a coal combustion residuals permit pro-
16 gram for a State only in the following cir-
17 cumstances:

18 “(A) If the Governor of such State notifies
19 the Administrator under subsection (b)(1) that
20 such State will not adopt and implement such
21 a permit program.

22 “(B) If such State has received a notice
23 under subsection (d) and, after any review
24 brought by the State under section 7006, fails,
25 by the deadline identified in such notice under

1 subsection (d)(2)(B), to remedy the deficiencies
2 detailed in such notice under subsection
3 (d)(2)(A).

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

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

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

20 “(f) STATE CONTROL AFTER IMPLEMENTATION BY
21 ADMINISTRATOR.—

22 “(1) STATE CONTROL.—

23 “(A) NEW ADOPTION AND IMPLEMENTA-
24 TION BY STATE.—For a State for which the
25 Administrator is implementing a coal combus-

1 tion residuals permit program under subsection
2 (e)(1)(A), the State may adopt and implement
3 such a permit program by—

4 “(i) notifying the Administrator that
5 the State will adopt and implement such a
6 permit program;

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

11 “(iii) receiving from the Adminis-
12 trator—

13 “(I) a determination that the
14 State coal combustion residuals per-
15 mit program meets the specifications
16 described in subsection (c)(1); and

17 “(II) a timeline for transition of
18 control of the coal combustion residu-
19 als permit program.

20 “(B) REMEDYING DEFICIENT PERMIT PRO-
21 GRAM.—For a State for which the Adminis-
22 trator is implementing a coal combustion re-
23 siduals permit program under subsection
24 (e)(1)(B), the State may adopt and implement
25 such a permit program by—

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

4 “(ii) receiving from the Adminis-
5 trator—

6 “(I) a determination that the de-
7 ficiencies detailed in such notice have
8 been remedied; and

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

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

18 “(i) notifying the Administrator that
19 the State will adopt and implement such a
20 permit program;

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

1 “(iii) receiving from the Adminis-
2 trator—

3 “(I) a determination that the
4 State coal combustion residuals per-
5 mit program meets the specifications
6 described in subsection (c)(1); and

7 “(II) a timeline for transition of
8 control of the coal combustion residu-
9 als permit program.

10 “(2) REVIEW OF DETERMINATION.—

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

19 “(B) REVIEW.—A State may obtain a re-
20 view of a determination by the Administrator
21 under paragraph (1) as if such determination
22 was a final regulation for purposes of section
23 7006.

24 “(3) IMPLEMENTATION DURING TRANSITION.—

1 “(A) EFFECT ON ACTIONS AND ORDERS.—
2 Actions taken or orders issued pursuant to a
3 coal combustion residuals permit program shall
4 remain in effect if—

5 “(i) a State takes control of its coal
6 combustion residuals permit program from
7 the Administrator under paragraph (1); or

8 “(ii) the Administrator takes control
9 of a coal combustion residuals permit pro-
10 gram from a State under subsection (e).

11 “(B) CHANGE IN REQUIREMENTS.—Sub-
12 paragraph (A) shall apply to such actions and
13 orders until such time as the Administrator or
14 the head of the lead State agency responsible
15 for implementing the coal combustion residuals
16 permit program, as applicable—

17 “(i) implements changes to the re-
18 quirements of the coal combustion residu-
19 als permit program with respect to the
20 basis for the action or order; or

21 “(ii) certifies the completion of a cor-
22 rective action that is the subject of the ac-
23 tion or order.

24 “(4) SINGLE PERMIT PROGRAM.—If a State
25 adopts and implements a coal combustion residuals

1 permit program under this subsection, the Adminis-
2 trator shall cease to implement the permit program
3 implemented under subsection (e) for such State.

4 “(g) EFFECT ON DETERMINATION UNDER 4005(C)
5 OR 3006.—The Administrator shall not consider the im-
6 plementation of a coal combustion residuals permit pro-
7 gram by the Administrator under subsection (e) in making
8 a determination of approval for a permit program or other
9 system of prior approval and conditions under section
10 4005(c) or of authorization for a program under section
11 3006.

12 “(h) CLOSURE.—If it is determined, pursuant to a
13 coal combustion residuals permit program, that a struc-
14 ture should close, the time period and method for the clo-
15 sure of such structure shall be set forth, in a schedule,
16 in a closure plan that takes into account the nature and
17 the site-specific characteristics of the structure to be
18 closed. In the case of a surface impoundment, the closure
19 plan shall require, at a minimum, the removal of liquid
20 and the stabilization of remaining waste, as necessary to
21 support the final cover.

22 “(i) AUTHORITY.—

23 “(1) STATE AUTHORITY.—Nothing in this sec-
24 tion shall preclude or deny any right of any State to
25 adopt or enforce any regulation or requirement re-

1 specting coal combustion residuals that is more
2 stringent or broader in scope than a regulation or
3 requirement under this section.

4 “(2) AUTHORITY OF THE ADMINISTRATOR.—

5 “(A) IN GENERAL.—Except as provided in
6 subsection (e) of this section and section 6005
7 of this title, the Administrator shall, with re-
8 spect to the regulation of coal combustion re-
9 siduals, defer to the States pursuant to this sec-
10 tion.

11 “(B) IMMINENT HAZARD.—Nothing in this
12 section shall be construed to affect the author-
13 ity of the Administrator under section 7003
14 with respect to coal combustion residuals.

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

20 “(k) DEFINITIONS.—In this section:

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

23 “(A) the solid wastes listed in section
24 3001(b)(3)(A)(i), including recoverable mate-
25 rials from such wastes;

1 “(B) coal combustion wastes that are co-
2 managed with wastes produced in conjunction
3 with the combustion of coal, provided that such
4 wastes are not segregated and disposed of sepa-
5 rately from the coal combustion wastes and
6 comprise a relatively small proportion of the
7 total wastes being disposed in the structure;

8 “(C) fluidized bed combustion wastes;

9 “(D) wastes from the co-burning of coal
10 with non-hazardous secondary materials pro-
11 vided that coal makes up at least 50 percent of
12 the total fuel burned; and

13 “(E) wastes from the co-burning of coal
14 with materials described in subparagraph (A)
15 that are recovered from monofills.

16 “(2) COAL COMBUSTION RESIDUALS PERMIT
17 PROGRAM.—The term ‘coal combustion residuals
18 permit program’ means a permit program or other
19 system of prior approval and conditions that is
20 adopted by or for a State for the management and
21 disposal of coal combustion residuals to the extent
22 such activities occur in structures in such State.

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

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

6 **SEC. 3. 2000 REGULATORY DETERMINATION.**

7 Nothing in this Act, or the amendments made by this
8 Act, shall be construed to alter in any manner the Envi-
9 ronmental Protection Agency’s regulatory determination
10 entitled “Notice of Regulatory Determination on Wastes
11 from the Combustion of Fossil Fuels”, published at 65
12 Fed. Reg. 32214 (May 22, 2000), that the fossil fuel com-
13 bustion wastes addressed in that determination do not
14 warrant regulation under subtitle C of the Solid Waste
15 Disposal Act (42 U.S.C. 6921 et seq.).

