

117TH CONGRESS
1ST SESSION

H. R. 2396

To amend the Solid Waste Disposal Act to ensure the safe disposal of coal combustion residuals.

IN THE HOUSE OF REPRESENTATIVES

APRIL 8, 2021

Mr. COHEN introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Solid Waste Disposal Act to ensure the safe disposal of coal combustion residuals.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Ensuring Safe Dis-
5 posal of Coal Ash Act”.

6 **SEC. 2. ENSURING SAFE DISPOSAL OF COAL ASH.**

7 Section 4005(d) of the Solid Waste Disposal Act (42
8 U.S.C. 6945(d)) is amended—

9 (1) in paragraph (1)—

1 (A) in subparagraph (A), in the matter
2 preceding clause (i), by striking “in lieu of reg-
3 ulation of coal combustion residuals units” and
4 inserting “as a program of regulation of coal
5 combustion residuals units pursuant to this
6 subsection”;

7 (B) in subparagraph (B)—

8 (i) in the matter preceding clause (i),
9 by striking “after public notice and an op-
10 portunity for public comment” and insert-
11 ing “after public notice, an opportunity for
12 public comment, and an opportunity for a
13 public hearing”; and

14 (ii) in clause (i), by inserting “as re-
15 vised pursuant to paragraph (8) of this
16 subsection” after “Code of Federal Regula-
17 tions”;

18 (C) in subparagraph (D)—

19 (i) in clause (i)(I), by striking “12”
20 and inserting “5”;

21 (ii) in clause (i)(II), by striking “not
22 later than 3 years” and inserting “not
23 later than 1 year”;

1 (iii) in clause (ii)(II), by inserting
2 “clauses (i) and (ii) of” before “subpara-
3 graph (B)”;

4 (iv) by adding at the end the fol-
5 lowing:

6 “(iii) PERIOD FOR CORRECTION OF
7 DEFICIENCIES.—The Administrator shall
8 include in a notice under clause (ii) a rea-
9 sonable period for the State to correct the
10 deficiencies identified under such clause,
11 which shall not exceed 180 days.”;

12 (D) in subparagraph (E)—

13 (i) in clause (i), by inserting “by the
14 end of the period included in the notice
15 under subparagraph (D)(iii)” after “identi-
16 fied by the Administrator under subpara-
17 graph (D)(ii)”;

18 (ii) in clause (ii), by inserting “by the
19 end of the period included in the notice
20 under subparagraph (D)(iii)” after “identi-
21 fied by the Administrator under subpara-
22 graph (D)(ii)”;

23 (2) in paragraph (2)(B), by inserting “as re-
24 vised pursuant to paragraph (8) of this subsection”
25 after “Code of Federal Regulations”;

1 (3) in paragraph (3), by inserting “as revised
2 pursuant to paragraph (8) of this subsection” after
3 “Code of Federal Regulations”; and

4 (4) by adding at the end the following:

5 “(8) REVISION OF REGULATIONS AND REVIEW
6 OF APPROVED STATE PROGRAMS.—Not later than 2
7 years after the date of enactment of this paragraph,
8 the Administrator shall—

9 “(A) finalize revisions to the criteria for
10 coal combustion residuals units under part 257
11 of title 40, Code of Federal Regulations, to in-
12 clude any criteria necessary to protect human
13 health and the environment, including the
14 health of vulnerable or disproportionately ex-
15 posed subpopulations, as well as the following
16 minimum requirements:

17 “(i) Require meaningful public partici-
18 pation in the issuance and renewal of all
19 permits or other prior approvals, including
20 notice, opportunity to comment, and public
21 hearings to ensure that—

22 “(I) potentially affected residents
23 of a community have an appropriate
24 opportunity to participate in decisions
25 regarding a proposed activity that

1 may affect the environment or public
2 health of the community;

3 “(II) the public contribution can
4 influence the determination by the
5 Federal or State permitting agency;

6 “(III) the concerns of all partici-
7 pants involved are taken into consid-
8 eration in the decision-making proc-
9 ess; and

10 “(IV) the Federal or State per-
11 mitting agency provides to potentially
12 affected members of the public accu-
13 rate information and facilitates the in-
14 volvement of potentially affected mem-
15 bers of the public.

16 “(ii) Require financial assurance for
17 all coal combustion residuals units suffi-
18 cient to cover closure, post-closure care,
19 and corrective actions, and responsibility
20 for bodily injury and property damage to
21 third parties caused by sudden accidental
22 occurrences arising from operations of the
23 facility, in the form of a surety bond or ir-
24 revocable letter of credit, with no allowance
25 for insurance or for financial tests, cor-

1 porate guarantees, or other forms of self-
2 bonding.

3 “(iii) Prohibit the continued operation
4 of unlined impoundments, which shall in-
5 clude all coal combustion residuals units
6 that fail to meet the design criteria for new
7 impoundments pursuant to part 257 of
8 title 40, Code of Federal Regulations.

9 “(iv) Limit fugitive dust emissions at
10 coal combustion residuals units and, in-
11 cluding during closure and corrective ac-
12 tion, to no more than 35 micrograms per
13 square meter, or another standard estab-
14 lished by the Administrator that will pro-
15 tect human health, including the health of
16 vulnerable or disproportionately exposed
17 subpopulations, and require air monitoring
18 and public reporting to ensure such stand-
19 ard is met.

20 “(v) Require permit or other prior ap-
21 proval terms that do not exceed 5 years.

22 “(vi) Require permits for operation,
23 closure, and corrective action that ensure
24 compliance with all applicable require-
25 ments, and deny any permit for closure

1 that would allow coal combustion residuals
2 to be—

3 “(I) in contact with ground
4 water, including on an intermittent or
5 seasonal basis; or

6 “(II) in a location that does not
7 meet the requirements for new coal
8 combustion residuals units under part
9 257 of title 40, Code of Federal Regu-
10 lations, including but not limited to
11 floodplains.

12 “(vii) Prohibit, as open dumping, the
13 unencapsulated use of coal combustion re-
14 siduals when placed on land, unless, in the
15 case of soil amendment for agricultural
16 use, the placement meets limits established
17 by Environmental Protection Agency to
18 protect health and the environment.

19 “(viii) Require compliance with the
20 criteria in part 257 of title 40, Code of
21 Federal Regulations, for any coal combus-
22 tion residuals unit, without regard to when
23 the unit ceased accepting coal combustion
24 residuals.

1 “(ix) Require groundwater monitoring
2 methods that are sufficient to detect con-
3 taminants at levels defined in applicable
4 groundwater protection standards.

5 “(x) Add boron, hexavalent chromium,
6 manganese, and sulfate to the constituents
7 listed in Appendix IV to part 257 of title
8 40, Code of Federal Regulations.

9 “(xi) Require corrective action beyond
10 facility boundaries, as needed to protect
11 human health and the environment, includ-
12 ing the health of vulnerable or dispropor-
13 tionately exposed subpopulations.

14 “(xii) Require owners and operators
15 to complete remedial activities to prevent
16 further releases, to remediate any releases
17 and to restore the affected area to original
18 conditions as soon as feasible and to pub-
19 lish semi-annual progress reports on pub-
20 licly accessible websites from the date of
21 remedy selection until completion of the
22 remedy.

23 “(xiii) Require owners and operators
24 to determine whether releases of coal com-
25 bustion residuals constituents from coal

1 combustion residuals units threaten drink-
2 ing water wells and to supply alternative
3 sources of safe drinking water as soon as
4 feasible to well users, if water is adversely
5 impacted;

6 “(B) promulgate regulations that set forth
7 minimum requirements for State and Federal
8 coal combustion residuals permit programs, in-
9 cluding but not limited to public participation
10 requirements in accordance with paragraph
11 (8)(A)(i), enforcement capabilities, transparency
12 of compliance documents, and equity in applica-
13 tion to low-income communities, communities of
14 color, and other disproportionately impacted
15 populations;

16 “(C) promulgate regulations to require
17 owners of closed coal combustion residuals dis-
18 posal sites to identify the locations of such sites
19 through surveying, platting, or other measures,
20 together with recordation of such information
21 on the public record, to ensure that the loca-
22 tions where such wastes are disposed of are
23 known and can be located in the future; and

24 “(D) review under paragraph (1)(D) any
25 State program that has been approved under

1 paragraph (1)(B) to ensure compliance with the
2 revised criteria promulgated under subpara-
3 graph (A) and the regulations promulgated
4 under subparagraphs (B) and (C).”.

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