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(Original Signature of Member)

117TH CONGRESS  
1ST SESSION

**H. R.** \_\_\_\_\_

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

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IN THE HOUSE OF REPRESENTATIVES

Mr. COHEN introduced the following bill; which was referred to the Committee on \_\_\_\_\_  
\_\_\_\_\_

**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).”.