117TH CONGRESS
1ST SESSION

H. R. _____

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

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.

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

SECTION 1. SHORT TITLE.

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

SEC. 2. ENSURING SAFE DISPOSAL OF COAL ASH.

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

(1) in paragraph (1)—
(A) in subparagraph (A), in the matter preceding clause (i), by striking “in lieu of regulation of coal combustion residuals units” and inserting “as a program of regulation of coal combustion residuals units pursuant to this subsection”;

(B) in subparagraph (B)—

(i) in the matter preceding clause (i), by striking “after public notice and an opportunity for public comment” and inserting “after public notice, an opportunity for public comment, and an opportunity for a public hearing”; and

(ii) in clause (i), by inserting “as revised pursuant to paragraph (8) of this subsection” after “Code of Federal Regulations”;

(C) in subparagraph (D)—

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

(ii) in clause (i)(II), by striking “not later than 3 years” and inserting “not later than 1 year”;
(iii) in clause (ii)(II), by inserting
“clauses (i) and (ii) of” before “subpara-
graph (B)” ; and
(iv) by adding at the end the fol-
lowing:
“(iii) PERIOD FOR CORRECTION OF
DEFICIENCIES.—The Administrator shall
include in a notice under clause (ii) a rea-
sonable period for the State to correct the
deficiencies identified under such clause,
which shall not exceed 180 days.” ; and
(D) in subparagraph (E)—
(i) in clause (i), by inserting “by the
end of the period included in the notice
under subparagraph (D)(iii)” after “identi-
fied by the Administrator under subpara-
graph (D)(ii)” ; and
(ii) in clause (ii), by inserting “by the
end of the period included in the notice
under subparagraph (D)(iii)” after “identi-
fied by the Administrator under subpara-
graph (D)(ii)”;
(2) in paragraph (2)(B), by inserting “as re-
vised pursuant to paragraph (8) of this subsection”
after “Code of Federal Regulations”;
(3) in paragraph (3), by inserting “as revised pursuant to paragraph (8) of this subsection” after “Code of Federal Regulations”; and

(4) by adding at the end the following:

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

“(A) finalize revisions to the criteria for coal combustion residuals units under part 257 of title 40, Code of Federal Regulations, to include any criteria necessary to protect human health and the environment, including the health of vulnerable or disproportionately exposed subpopulations, as well as the following minimum requirements:

“(i) Require meaningful public participation in the issuance and renewal of all permits or other prior approvals, including notice, opportunity to comment, and public hearings to ensure that—

“(I) potentially affected residents of a community have an appropriate opportunity to participate in decisions regarding a proposed activity that
may affect the environment or public health of the community;

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

“(III) the concerns of all participants involved are taken into consideration in the decision-making process; and

“(IV) the Federal or State permitting agency provides to potentially affected members of the public accurate information and facilitates the involvement of potentially affected members of the public.

“(ii) Require financial assurance for all coal combustion residuals units sufficient to cover closure, post-closure care, and corrective actions, and responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility, in the form of a surety bond or irrevocable letter of credit, with no allowance for insurance or for financial tests, cor-
porate guarantees, or other forms of self-bonding.

“(iii) Prohibit the continued operation of unlined impoundments, which shall include all coal combustion residuals units that fail to meet the design criteria for new impoundments pursuant to part 257 of title 40, Code of Federal Regulations.

“(iv) Limit fugitive dust emissions at coal combustion residuals units and, including during closure and corrective action, to no more than 35 micrograms per square meter, or another standard established by the Administrator that will protect human health, including the health of vulnerable or disproportionately exposed subpopulations, and require air monitoring and public reporting to ensure such standard is met.

“(v) Require permit or other prior approval terms that do not exceed 5 years.

“(vi) Require permits for operation, closure, and corrective action that ensure compliance with all applicable requirements, and deny any permit for closure
that would allow coal combustion residuals to be—

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

“(II) in a location that does not meet the requirements for new coal combustion residuals units under part 257 of title 40, Code of Federal Regulations, including but not limited to floodplains.

“(vii) Prohibit, as open dumping, the unencapsulated use of coal combustion residuals when placed on land, unless, in the case of soil amendment for agricultural use, the placement meets limits established by Environmental Protection Agency to protect health and the environment.

“(viii) Require compliance with the criteria in part 257 of title 40, Code of Federal Regulations, for any coal combustion residuals unit, without regard to when the unit ceased accepting coal combustion residuals.
“(ix) Require groundwater monitoring methods that are sufficient to detect contaminants at levels defined in applicable groundwater protection standards.

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

“(xi) Require corrective action beyond facility boundaries, as needed to protect human health and the environment, including the health of vulnerable or disproportionately exposed subpopulations.

“(xii) Require owners and operators to complete remedial activities to prevent further releases, to remediate any releases and to restore the affected area to original conditions as soon as feasible and to publish semi-annual progress reports on publicly accessible websites from the date of remedy selection until completion of the remedy.

“(xiii) Require owners and operators to determine whether releases of coal combustion residuals constituents from coal
combustion residuals units threaten drinking water wells and to supply alternative sources of safe drinking water as soon as feasible to well users, if water is adversely impacted.

“(B) promulgate regulations that set forth minimum requirements for State and Federal coal combustion residuals permit programs, including but not limited to public participation requirements in accordance with paragraph (8)(A)(i), enforcement capabilities, transparency of compliance documents, and equity in application to low-income communities, communities of color, and other disproportionately impacted populations;

“(C) promulgate regulations to require owners of closed coal combustion residuals disposal sites to identify the locations of such sites through surveying, platting, or other measures, together with recordation of such information on the public record, to ensure that the locations where such wastes are disposed of are known and can be located in the future; and

“(D) review under paragraph (1)(D) any State program that has been approved under
paragraph (1)(B) to ensure compliance with the revised criteria promulgated under subparagraph (A) and the regulations promulgated under subparagraphs (B) and (C).”.