

3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
MCKINLEY OF WEST VIRGINIA OR HIS DESIGNEE, DEBATABLE
FOR 10 MINUTES

AMENDMENT TO H.R. 4348

OFFERED BY MR. MCKINLEY OF WEST VIRGINIA

At the end of the bill, add the following (and conform the table of contents of the bill accordingly):

1 **TITLE IV—COAL COMBUSTION**
2 **RESIDUALS**

3 **SEC. 401. HIGHWAY AND INFRASTRUCTURE SAFETY**
4 **THROUGH THE PROTECTION OF COAL COM-**
5 **BUSTION RESIDUAL RECYCLING.**

6 (a) IN GENERAL.—Subtitle D of the Solid Waste Dis-
7 posal Act (42 U.S.C. 6941 et seq.) is amended by adding
8 at the end 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
19 notify the Administrator, in writing, whether such

1 State will adopt and implement a coal combustion
2 residuals permit program.

3 “(2) CERTIFICATION.—

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

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

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

22 “(ii) identification of any other State
23 agencies involved with the implementation
24 of the coal combustion residuals permit
25 program;

1 “(iii) a narrative description that pro-
2 vides an explanation of how the State will
3 ensure that the coal combustion residuals
4 permit program meets the requirements of
5 this section, including a description of the
6 State’s—

7 “(I) process to inspect or other-
8 wise determine compliance with such
9 permit program;

10 “(II) process to enforce the re-
11 quirements of such permit program;
12 and

13 “(III) public participation proc-
14 ess for the promulgation, amendment,
15 or repeal of regulations for, and the
16 issuance of permits under, such per-
17 mit program;

18 “(iv) a legal certification that the
19 State has, at the time of certification, fully
20 effective statutes or regulations necessary
21 to implement a coal combustion residuals
22 permit program that meets the specifica-
23 tions described in subsection (c)(1); and

24 “(v) copies of State statutes and regu-
25 lations described in clause (iv).

1 “(3) MAINTENANCE OF 4005(C) OR 3006 PRO-
2 GRAM.—In order to adopt or implement a coal com-
3 bustion residuals permit program under this section
4 (including pursuant to subsection (f)), the State
5 agency responsible for implementing a coal combus-
6 tion residuals permit program in a State shall main-
7 tain an approved program under section 4005(c) or
8 an authorized program under section 3006.

9 “(c) PERMIT PROGRAM SPECIFICATIONS.—

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

13 “(A) The revised criteria described in
14 paragraph (2) shall apply to a coal combustion
15 residuals permit program, except as provided in
16 paragraph (3).

17 “(B) Each structure shall be, in accord-
18 ance with generally accepted engineering stand-
19 ards for the structural integrity of such struc-
20 tures, designed, constructed, and maintained to
21 provide for containment of the maximum vol-
22 umes of coal combustion residuals appropriate
23 for the structure. If a structure is determined
24 by the head of the agency responsible for imple-
25 menting the coal combustion residuals permit

1 program to be deficient, the head of such agen-
2 cy has authority to require action to correct the
3 deficiency according to a schedule determined
4 by such agency. If the identified deficiency is
5 not corrected according to such schedule, the
6 head of such agency has authority to require
7 that the structure close in accordance with sub-
8 section (h).

9 “(C) The coal combustion residuals permit
10 program shall apply the revised criteria promul-
11 gated pursuant to section 4010(c) for location,
12 design, groundwater monitoring, corrective ac-
13 tion, financial assurance, closure, and post-clo-
14 sure described in paragraph (2) and the speci-
15 fications described in this paragraph to surface
16 impoundments.

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

1 cient with respect to the structural integrity re-
2 quirement in subparagraph (B), the head of
3 such agency has authority to require action to
4 correct the deficiency according to a schedule
5 determined by such agency. If the identified de-
6 ficiency is not corrected according to such
7 schedule, the head of such agency has authority
8 to require that the structure close in accordance
9 with subsection (h).

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

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

20 “(G) In the case of a coal combustion re-
21 siduals permit program implemented by a
22 State, the State has the authority to address
23 wind dispersal of dust from coal combustion re-
24 siduals by requiring dust control measures, as
25 determined appropriate by the head of the lead

1 State agency responsible for implementing the
2 coal combustion residuals permit program.

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

5 “(A) the revised criteria for design,
6 groundwater monitoring, corrective action, clo-
7 sure, and post-closure, for structures, includ-
8 ing—

9 “(i) for new structures, and lateral ex-
10 pansions of existing structures, that first
11 receive coal combustion residuals after the
12 date of enactment of this section, the re-
13 vised criteria regarding design require-
14 ments described in section 258.40 of title
15 40, Code of Federal Regulations; and

16 “(ii) for all structures that receive
17 coal combustion residuals after the date of
18 enactment of this section, the revised cri-
19 teria regarding groundwater monitoring
20 and corrective action requirements de-
21 scribed in subpart E of part 258 of title
22 40, Code of Federal Regulations, except
23 that, for the purposes of this paragraph,
24 such revised criteria shall also include—

1 “(I) for the purposes of detection
2 monitoring, the constituents boron,
3 chloride, conductivity, fluoride, mer-
4 cury, pH, sulfate, sulfide, and total
5 dissolved solids; and

6 “(II) for the purposes of assess-
7 ment monitoring, the constituents alu-
8 minum, boron, chloride, fluoride, iron,
9 manganese, molybdenum, pH, sulfate,
10 and total dissolved solids;

11 “(B) the revised criteria for location re-
12 strictions described in—

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

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

24 “(C) for all structures that receive coal
25 combustion residuals after the date of enact-

1 ment of this section, the revised criteria for air
2 quality described in section 258.24 of title 40,
3 Code of Federal Regulations;

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

10 “(E) for all structures that receive coal
11 combustion residuals after the date of enact-
12 ment of this section, the revised criteria for sur-
13 face water described in section 258.27 of title
14 40, Code of Federal Regulations;

15 “(F) for all structures that receive coal
16 combustion residuals after the date of enact-
17 ment of this section, the revised criteria for rec-
18 ordkeeping described in section 258.29 of title
19 40, Code of Federal Regulations;

20 “(G) for landfills and other land-based
21 units, other than surface impoundments, that
22 receive coal combustion residuals after the date
23 of enactment of this section, the revised criteria
24 for run-on and run-off control systems de-

1 scribed in section 258.26 of title 40, Code of
2 Federal Regulations; and

3 “(H) for surface impoundments that re-
4 ceive coal combustion residuals after the date of
5 enactment of this section, the revised criteria
6 for run-off control systems described in section
7 258.26(a)(2) of title 40, Code of Federal Regu-
8 lations.

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

1 “(d) WRITTEN NOTICE AND OPPORTUNITY TO REM-
2 EDY.—

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

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

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

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

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

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

19 “(A) include findings of the Administrator
20 detailing any applicable deficiencies in—

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

1 “(ii) compliance by the State with the
2 certification requirement under subsection
3 (b)(2);

4 “(iii) compliance by the State with the
5 maintenance requirement under subsection
6 (b)(3); and

7 “(iv) the State coal combustion re-
8 siduals permit program in meeting the
9 specifications described in subsection
10 (c)(1); and

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

16 “(e) IMPLEMENTATION BY ADMINISTRATOR.—

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

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

1 “(B) If such State has received a notice
2 under subsection (d) and, after any review
3 brought by the State under section 7006, fails,
4 by the deadline identified in such notice under
5 subsection (d)(2)(B), to remedy the deficiencies
6 detailed in such notice under subsection
7 (d)(2)(A).

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

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

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

24 “(f) STATE CONTROL AFTER IMPLEMENTATION BY
25 ADMINISTRATOR.—

1 “(1) STATE CONTROL.—

2 “(A) NEW ADOPTION AND IMPLEMENTA-
3 TION BY STATE.—For a State for which the
4 Administrator is implementing a coal combus-
5 tion residuals permit program under subsection
6 (e)(1)(A), the State may adopt and implement
7 such a permit program by—

8 “(i) notifying the Administrator that
9 the State will adopt and implement such a
10 permit program;

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

15 “(iii) receiving from the Adminis-
16 trator—

17 “(I) a determination that the
18 State coal combustion residuals per-
19 mit program meets the specifications
20 described in subsection (c)(1); and

21 “(II) a timeline for transition of
22 control of the coal combustion residu-
23 als permit program.

24 “(B) REMEDYING DEFICIENT PERMIT PRO-
25 GRAM.—For a State for which the Adminis-

1 trator is implementing a coal combustion re-
2 siduals permit program under subsection
3 (e)(1)(B), the State may adopt and implement
4 such a permit program by—

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

8 “(ii) receiving from the Adminis-
9 trator—

10 “(I) a determination that the de-
11 ficiencies detailed in such notice have
12 been remedied; and

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

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

22 “(i) notifying the Administrator that
23 the State will adopt and implement such a
24 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 “(2) REVIEW OF DETERMINATION.—

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

23 “(B) REVIEW.—A State may obtain a re-
24 view of a determination by the Administrator
25 under paragraph (1) as if such determination

1 was a final regulation for purposes of section
2 7006.

3 “(3) IMPLEMENTATION DURING TRANSITION.—

4 “(A) EFFECT ON ACTIONS AND ORDERS.—

5 Actions taken or orders issued pursuant to a
6 coal combustion residuals permit program shall
7 remain in effect if—

8 “(i) a State takes control of its coal
9 combustion residuals permit program from
10 the Administrator under paragraph (1); or

11 “(ii) the Administrator takes control
12 of a coal combustion residuals permit pro-
13 gram from a State under subsection (e).

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

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

1 “(ii) certifies the completion of a cor-
2 rective action that is the subject of the ac-
3 tion or order.

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

9 “(g) EFFECT ON DETERMINATION UNDER 4005(C)
10 OR 3006.—The Administrator shall not consider the im-
11 plementation of a coal combustion residuals permit pro-
12 gram by the Administrator under subsection (e) in making
13 a determination of approval for a permit program or other
14 system of prior approval and conditions under section
15 4005(c) or of authorization for a program under section
16 3006.

17 “(h) CLOSURE.—If it is determined, pursuant to a
18 coal combustion residuals permit program, that a struc-
19 ture should close, the time period and method for the clo-
20 sure of such structure shall be set forth in a closure plan
21 that establishes a deadline for completion and that takes
22 into account the nature and the site-specific characteris-
23 tics of the structure to be closed. In the case of a surface
24 impoundment, the closure plan shall require, at a min-

1 inum, the removal of liquid and the stabilization of re-
2 maining waste, as necessary to support the final cover.

3 “(i) AUTHORITY.—

4 “(1) STATE AUTHORITY.—Nothing in this sec-
5 tion shall preclude or deny any right of any State to
6 adopt or enforce any regulation or requirement re-
7 specting coal combustion residuals that is more
8 stringent or broader in scope than a regulation or
9 requirement under this section.

10 “(2) AUTHORITY OF THE ADMINISTRATOR.—

11 “(A) IN GENERAL.—Except as provided in
12 subsection (e) of this section and section 6005
13 of this title, the Administrator shall, with re-
14 spect to the regulation of coal combustion re-
15 siduals, defer to the States pursuant to this sec-
16 tion.

17 “(B) IMMINENT HAZARD.—Nothing in this
18 section shall be construed to affect the author-
19 ity of the Administrator under section 7003
20 with respect to coal combustion residuals.

21 “(C) TECHNICAL AND ENFORCEMENT AS-
22 SISTANCE ONLY UPON REQUEST.—Upon re-
23 quest from the head of a lead State agency that
24 is implementing a coal combustion residuals
25 permit program, the Administrator may provide

1 to such State agency only the technical or en-
2 forcement assistance requested.

3 “(3) CITIZEN SUITS.—Nothing in this section
4 shall be construed to affect the authority of a person
5 to commence a civil action in accordance with sec-
6 tion 7002.

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

12 “(k) DEFINITIONS.—In this section:

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

15 “(A) the solid wastes listed in section
16 3001(b)(3)(A)(i), including recoverable mate-
17 rials from such wastes;

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

25 “(C) fluidized bed combustion wastes;

1 “(D) wastes from the co-burning of coal
2 with non-hazardous secondary materials pro-
3 vided that coal makes up at least 50 percent of
4 the total fuel burned; and

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

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

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

18 “(4) REVISED CRITERIA.—The term ‘revised
19 criteria’ means the criteria promulgated for munic-
20 ipal solid waste landfill units under section 4004(a)
21 and under section 1008(a)(3), as revised under sec-
22 tion 4010(c) in accordance with the requirement of
23 such section that the criteria protect human health
24 and the environment.”.

1 (b) 2000 REGULATORY DETERMINATION.—Nothing
2 in this section, or the amendments made by this section,
3 shall be construed to alter in any manner the Environ-
4 mental Protection Agency’s regulatory determination enti-
5 tled “Notice of Regulatory Determination on Wastes from
6 the Combustion of Fossil Fuels”, published at 65 Fed.
7 Reg. 32214 (May 22, 2000), that the fossil fuel combus-
8 tion wastes addressed in that determination do not war-
9 rant regulation under subtitle C of the Solid Waste Dis-
10 posal Act (42 U.S.C. 6921 et seq.).

11 (c) CONFORMING AMENDMENT.—The table of con-
12 tents contained in section 1001 of the Solid Waste Dis-
13 posal Act is amended by inserting after the item relating
14 to section 4010 the following:

“Sec. 4011. Management and disposal of coal combustion residuals.”.

