

**AMENDMENT TO THE RULES COMMITTEE PRINT  
OF H.R. 7  
OFFERED BY MR. MCKINLEY OF WEST VIRGINIA**

At the end of title III, add the following, and conform the table of contents, accordingly:

1 **SEC. 3020. HIGHWAY AND INFRASTRUCTURE SAFETY**  
2 **THROUGH THE PROTECTION OF COAL COM-**  
3 **BUSTION RESIDUAL RECYCLING.**

4 (a) IN GENERAL.—Subtitle D of the Solid Waste Dis-  
5 posal Act (42 U.S.C. 6941 et seq.) is amended by adding  
6 at the end the following new section:

7 **“SEC. 4011. MANAGEMENT AND DISPOSAL OF COAL COM-**  
8 **BUSTION RESIDUALS.**

9 “(a) STATE PERMIT PROGRAMS FOR COAL COMBUS-  
10 TION RESIDUALS.—Each State may adopt and implement  
11 a coal combustion residuals permit program.

12 “(b) STATE ACTIONS.—

13 “(1) NOTIFICATION.—Not later than 6 months  
14 after the date of enactment of this section (except  
15 as provided by the deadline identified under sub-  
16 section (d)(2)(B)), the Governor of each State shall  
17 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(e) 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 (e)(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(e) 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                  ties of the structure to be closed. In the case of a surface  
24                  impoundment, the closure plan shall require, at a min-

1 imum, 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.”.

